

1 MICHAEL R. SIMMONDS (SBN 96238)
2 TOMIO B. NARITA (SBN 156576)
3 JEFFREY A. TOPOR (SBN 195545)
4 SIMMONDS & NARITA LLP
5 44 Montgomery Street, Suite 3010
6 San Francisco, CA 94104-4816
7 Telephone: (415) 283-1000
8 Facsimile: (415) 352-2625
9 msimmonds@snllp.com
10 tnarita@snllp.com
11 jtopor@snllp.com

12 Attorneys for Defendants
13 Collins Financial Services, Inc. and
14 Nelson & Kennard

15 UNITED STATES DISTRICT COURT
16 SOUTHERN DISTRICT OF CALIFORNIA

17 DAVID TOURGEMAN,

18 Plaintiff,

19 vs.

20 COLLINS FINANCIAL SERVICES,
21 INC., a corporation; NELSON &
22 KENNARD, a partnership, DELL
23 FINANCIAL SERVICES, L.P., a
24 limited partnership; DFS
25 ACCEPTANCE, a corporation, DFS
26 PRODUCTION, a corporation,
27 AMERICAN INVESTMENT BANK,
28 N.A., a corporation; and DOES 1
through 10, inclusive,

Defendants.

CASE NO. 08-CV-1392 JLS NLS

**DEFENDANTS' SEPARATE
STATEMENT IN SUPPORT OF
OPPOSITION TO PLAINTIFF'S
MOTION TO COMPEL FURTHER
RESPONSE BY COLLINS
FINANCIAL SERVICES, INC. TO
REQUESTS FOR PRODUCTION
AND INTERROGATORIES**

Date: April 5, 2010

Time: 9:30 a.m.

Crtrm: 1101

The Honorable Nita L. Stormes

Defendants submit this Opposition to the Separate Statement Filed by Plaintiff In Connection with the Motion To Compel Further Responses By Collins Financial.

DOCUMENT REQUESTS

DOCUMENT REQUEST NO. 1:

Please produce ALL COMMUNICATIONS between COLLINS and NELSON that RELATE TO Plaintiff David Tourgeman and the collection of his alleged debt. To the extent that these communications need to be redacted for privilege, please provide Plaintiff with a privilege log as described above.

RESPONSE TO DOCUMENT REQUEST NO. 1:

Defendant objects to this Request on the grounds that it is overbroad, unduly burdensome and oppressive, and to the extent that it seeks information which is not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this Request to the extent that it seeks proprietary information, trade secret information, information subject to protective orders, confidentiality agreements, or statutory provisions that bar the disclosure of that information without the consent of third parties and to the extent that it seeks information subject to the attorney-client privilege or the attorney work product doctrine.

Subject to and without waiving the forgoing objections or the General Objections, Defendant will produce all non-privileged documents in its possession, custody or control that relate to the Plaintiff, his account or the defenses asserted in this action.

PLAINTIFF'S REASONS TO COMPEL RESPONSE TO DOCUMENT REQUEST NO. 1:

Federal Rule of Civil Procedure 34(b)(2)(C) requires that "[a]n objection to part of a request must specify the part and permit inspection of the rest."; *see also E. & J. Gallo Winery v. Cantine Rallo, S.p.A.*, 2006 U.S. Dist. LEXIS 42069, *3-4(E.D.

Cal. 2006)(“If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.”). In *E. & J. Gallo Winery*, the court ordered the defendant to provide supplemental responses because the defendant’s original responses contained imprecise, boilerplate objections:

Defendant’s responses do not allow for meaningful evaluation. Plaintiff and the Court are unable to determine, with certainty, the requests for which Defendant is producing documents, the requests for which Defendant is withholding documents and on what basis, and the requests for which it has no responsive documents. Defendant cites boilerplate general objections, and does not explain why the objection applies to the response or whether documents were withheld pursuant to the stated objections.

Id. at *4-5.

Collins objects to Request No. 1 on the basis that it is “overbroad, unduly burdensome and oppressive” and “not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of admissible evidence.” But Collins fails to provide any explanation for these objections. *Keith H. v. Long Beach Unified Sch. Dist.*, 228 F.R.D.652, 655-56 (C.D. Cal. 2005) (“The party who resists discovery has the burden to show discovery should not be allowed, and has the burden of clarifying, explaining, and supporting its objections.”). Moreover, because Collins’s response is so broad and unspecific, it is impossible to tell whether documents are being withheld on the basis of the stated objections, and/or whether responsive documents even exist.

Further, Federal Rule of Civil Procedure 26(b)(5) states that:

When a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, the party must:

- (i) expressly make the claim; and
- (ii) describe the nature of the documents, communications, or tangible things not produced or disclosed—and do so in a manner that, without

1 revealing information itself privileged or protected, will enable other
2 parties to assess the claim.

3 “A privilege log should contain the following information: (1) the identity and
4 position of its author; (2) the identity and position of the recipient(s); (3) the date it
5 was prepared or written; (4) the title and description of the document; (5) the subject
6 matter addressed; (6) the purposes for which it was prepared or communicated; (7)
7 the document’s present location; and (8) the specific privilege or other reason it is
8 being withheld.” *Mancini v. Ins. Corp.*, 2009 U.S. Dist. LEXIS 51321, *10 (S.D.
9 Cal. 2009). When asserting the attorney-client privilege, “[t]he party asserting the
10 privilege bears the initial burden of demonstrating that the communication falls
11 within the privilege.” *Bible v. Rio Props., Inc.*, 246 F.R.D. 614, 620 (C.D. Cal.
12 2007).

13 Here, Collins asserts the attorney-client privilege and attorney work product
14 protection to Request No. 1. The objection is stated simply as “seek[ing] information
15 subject to the attorney-client privilege or the attorney work product doctrine.” Such
16 a blanket assertion of the attorney-client privilege or work product doctrine is
17 insufficient to enable the propounding party to assess the applicability of the
18 privilege or protection to the specific facts of the interrogatory in question. Further,
19 Collins has failed to produce a privilege log containing any of the above-described
20 information as required by Federal Rule of Civil Procedure 26(b)(5). (Weaver Dec.
21 ¶13). Consequently, the privilege claims cannot be properly evaluated.

22 Accordingly, Tourgeman requests that this Court order Collins to provide a
23 privilege log for response to Request No. 1, provide a supplemental response to
24 Request No. 1 without the stated objections, provide a substantive response, and
25 produce any documents improperly withheld from production.

26 **DEFENDANTS’ REASONS WHY NO FURTHER RESPONSE IS REQUIRED**
27 **TO DOCUMENT REQUEST NO. 1:**

28 The motion to compel should be denied as to this request because Plaintiff has

1 never made any attempt to meet and confer regarding the request before filing the
2 motion. No party may move for an order compelling further discovery until after the
3 party has made a good faith attempt to meet and confer to resolve the dispute without
4 court intervention. The Federal Rules Of Civil Procedure and Local Rules of this
5 Court are crystal clear on this point. *See* Fed. R. Civ. P. 37(a)(1) (“The motion must
6 include a certification that the movant has in good faith conferred or attempted to
7 confer with the person or party failing to make disclosure or discovery in an effort to
8 obtain it without court action.”); Local Rule 26.1a (“The court will entertain no
9 motion pursuant to Rules 26 through 37, Fed. R. Civ. P., unless counsel will have
10 previously met and conferred on **all disputed issues.**”).

11 Despite these clear requirements, this is one of eighteen separate discovery
12 requests that were never discussed in any letter or any phone call by counsel for
13 Tourgeman for this motion was filed. *See* Declaration of Tomio B. Narita In Support
14 Of Opposition To Motion To Compel And Motion For Protective Order And Award
15 Of Sanctions (“Narita Decl.”), ¶¶ 3-6, Exs. A and B. Defendants specifically
16 informed counsel for Tourgeman that the motion was improper because no meet and
17 confer had been conducted, but Tourgeman’s counsel refused to take the motion off
18 calendar, and refused to withdraw the motion as to the eighteen requests. *Id.*

19 Since no meet and confer was conducted as to “all disputed issues” as required
20 by Rule 26.1a of the Local Rules, the entire motion should be denied. At a bare
21 minimum, the Court should deny the motion as to all of the eighteen discovery
22 requests, including this one, that were never discussed by counsel. *See Presidio*
23 *Components, Inc. v. American Technical Ceramics Corp.*, 2009 WL 1423577, *3-4
24 (S.D. Cal. May 20, 2009) (denying motion to compel where no proper meet and
25 confer conducted in advance of motion). Counsel for Tourgeman should also be
26 sanctioned for their deliberate refusal to comply with the requirements of the Federal
27 Rules and the Local Rules.
28

DOCUMENT REQUEST NO. 2:

Please produce ALL training materials that RELATE TO debt collection YOU provide to COLLINS employees.

RESPONSE TO DOCUMENT REQUEST NO. 2:

Subject to and without waiving the foregoing objections or the General Objections, Defendant responds as follows:

Defendant is not a “debt collector” as defined by the FDCPA and it does not itself engage in the collection of debts. It does not have employees that engage in debt collection, and therefore does not train on collection and does not have responsive documents.

PLAINTIFF’S REASONS TO COMPEL RESPONSE TO DOCUMENT REQUEST NO. 2

Collins sued Tourgeman in San Diego Superior Court under its own name to collect on an alleged debt. In fact, Collins has filed more than 300 cases under its own name during the class period in the San Diego Superior Court alone. (Weaver Dec. ¶14). Based on this information, Tourgeman propounded document requests and special interrogatories on Collins. Collins cannot sue a debtor to collect a debt and then contend that it is not a debt collector. Collins is taking inconsistent positions.

Based on recent discussions with Collins’s counsel, Tourgeman has learned that Collins’s subsidiary, Paragon Way, collects debts on its behalf. While Tourgeman does not dispute that Paragon Way is the entity tasked with collecting debts on Collins’s behalf, Collins cannot use its subsidiary to shield itself from discovery. Case law directly refutes Collins’s position. “The discovery rules require that a corporation furnish such information as is available from the corporation itself or from sources under its control. If the corporation can obtain the information from sources under its control, it may not avoid answering by alleging ignorance.” *Goodrich Corp. v. Emhart Indus.*, 2005 U.S. Dist. LEXIS 17190, *9 (C.D. Cal.

2005). Here, Paragon Way is a subsidiary directly under Collins's control and thus Collins has no basis for withholding information related to Paragon Way.

Further, Tourgeman specifically defined Collins to include "anyone else acting on Collins Financial Services, Inc.'s behalf." Because Paragon Way was acting to collect debts on Collins's behalf and is Collins's subsidiary, this document request should have accounted for Paragon Way. Additionally, Collins, as the principal corporation, has control and possession of Paragon Way's documents. For instance, Collins agreed in its supplemental response to Interrogatory Nos. 13 and 20 to produce certain documents from Paragon Way. Therefore Collins's response that it is not a debt collector is inadequate.

Accordingly, Tourgeman requests that this Court order Collins to provide a supplemental response to Request No. 2 and produce any documents improperly withheld from production.

DEFENDANTS' REASONS WHY NO FURTHER RESPONSE IS REQUIRED TO DOCUMENT REQUEST NO. 2:

The motion to compel should be denied as to this request because Plaintiff has never made any attempt to meet and confer regarding the request before filing the motion. No party may move for an order compelling further discovery until after the party has made a good faith attempt to meet and confer to resolve the dispute without court intervention. The Federal Rules Of Civil Procedure and Local Rules of this Court are crystal clear on this point. *See* Fed. R. Civ. P. 37(a)(1) ("The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action."); Local Rule 26.1a ("The court will entertain no motion pursuant to Rules 26 through 37, Fed. R. Civ. P., unless counsel will have previously met and conferred on **all disputed issues**").

Despite these clear requirements, this is one of eighteen separate discovery requests that were never discussed in any letter or any phone call by counsel for

1 Tourgeman for this motion was filed. *See* Declaration of Tomio B. Narita In Support
2 Of Opposition To Motion To Compel And Motion For Protective Order And Award
3 Of Sanctions (“Narita Decl.”), ¶¶ 3-6, Exs. A and B. Defendants specifically
4 informed counsel for Tourgeman that the motion was improper because no meet and
5 confer had been conducted, but Tourgeman’s counsel refused to take the motion off
6 calendar, and refused to withdraw the motion as to the eighteen requests. *Id.*

7 Since no meet and confer was conducted as to “all disputed issues” as required
8 by Rule 26.1a of the Local Rules, the entire motion should be denied. At a bare
9 minimum, the Court should deny the motion as to all of the eighteen discovery
10 requests, including this one, that were never discussed by counsel. *See Presidio*
11 *Components, Inc. v. American Technical Ceramics Corp.*, 2009 WL 1423577, *3-4
12 (S.D. Cal. May 20, 2009) (denying motion to compel where no proper meet and
13 confer conducted in advance of motion). Counsel for Tourgeman should also be
14 sanctioned for their deliberate refusal to comply with the requirements of the Federal
15 Rules and the Local Rules.

16
17 **DOCUMENT REQUEST NO. 3:**

18 Please produce ALL DOCUMENTS CONCERNING the duties and
19 responsibilities of COLLINS employees who receive, maintain, and send data
20 regarding alleged debts.

21 **RESPONSE TO DOCUMENT REQUEST NO. 3:**

22 Defendant objects to this Request on the grounds that it is vague and
23 ambiguous as phrased. Defendant also objects to this Request on the grounds that, as
24 Defendant understands it, the Request is overbroad, unduly burdensome and
25 oppressive, and to the extent that it seeks information which is not relevant to the
26 subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of
27 admissible evidence. By asking Defendant to produce “ALL DOCUMENTS
28 CONCERNING the duties and responsibilities of COLLINS employees who receive,

1 maintain, and send data regarding alleged debts,” Plaintiff is potentially asking
2 Defendant to produce an enormous amount of documentation which will have no
3 bearing on this dispute. Defendant further objects to this Request to the extent that it
4 seeks proprietary information, trade secret information, information subject to
5 protective orders, confidentiality agreements, or statutory provisions that bar the
6 disclosure of that information without the consent of third parties and to the extent
7 that it seeks information subject to the attorney-client privilege or the attorney work
8 product doctrine.

9 Subject to and without waiving the forgoing objections or the General
10 Objections, Defendant responds that it is willing to meet and confer with Plaintiff in
11 order to understand the Request and to identify the scope of any potential production
12 of documents.

13 **SUPPLEMENTAL RESPONSE TO DOCUMENT REQUEST NO. 3:**

14 Defendant objects to this Request on the grounds that it is vague and
15 ambiguous as phrased. Defendant also objects to this Request on the grounds that, as
16 Defendant understands it, the Request is overbroad, unduly burdensome and
17 oppressive, and to the extent that it seeks information which is not relevant to the
18 subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of
19 admissible evidence. Plaintiff does not claim that his account data was altered by
20 Collins because the firm used inadequate procedures for “receiving” information
21 relating to his debt. Rather, Plaintiff alleges that he paid Dell in full for his computer
22 before the account was ever sold to Collins. Any information concerning his account
23 was, according to Plaintiff’s theory, already inaccurate when it was sold to Collins.
24 The company’s procedures for receiving data from its sellers would not be relevant.

25 Subject to the forgoing objections, Defendant responds as follows: Collins
26 does not “receive, maintain or send data” relating to alleged debts so it has no
27 responsive documents.
28

PLAINTIFF’S REASONS TO COMPEL RESPONSE TO DOCUMENT**REQUEST NO. 3**

Federal Rule of Civil Procedure 34(b)(2)(C) requires that “[a]n objection to part of a request must specify the part and permit inspection of the rest.”; *see also E. & J. Gallo Winery v. Cantine Rallo, S.p.A.*, 2006 U.S. Dist. LEXIS 42069, *3-4(E.D. Cal. 2006)(“If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.”). In *E. & J. Gallo Winery*, the court ordered the defendant to provide supplemental responses because the defendant’s original responses contained imprecise, boilerplate objections:

Defendant’s responses do not allow for meaningful evaluation. Plaintiff and the Court are unable to determine, with certainty, the requests for which Defendant is producing documents, the requests for which Defendant is withholding documents and on what basis, and the requests for which it has no responsive documents. Defendant cites boilerplate general objections, and does not explain why the objection applies to the response or whether documents were withheld pursuant to the stated objections.

Collins objects to Request No. 3 on the basis that it is “overbroad, unduly burdensome and oppressive” and “not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of admissible evidence.” Collins fails to provide any meaningful explanation for its objection that the request is overbroad, unduly burdensome and oppressive. *Keith H. v. Long Beach Unified Sch. Dist.*, 228 F.R.D.652, 655-56 (C.D. Cal. 2005) (“The party who resists discovery has the burden to show discovery should not be allowed, and has the burden of clarifying, explaining, and supporting its objections.”). Moreover, because Collins’s response is so broad and unspecific, it is impossible to tell whether documents are being withheld on the basis of the stated objections, and/or whether responsive documents even exist.

1 Collins argues that this Request is not relevant because Tourgeman's account
2 was already inaccurate when it was sold to Collins. This response improperly
3 narrows the scope of the Request. The Complaint, however, contains well-pleaded
4 allegations that Collins engages in improper debt collection practices. Indeed the
5 Complaint includes class allegations and a class comprised of:

6 All consumers residing in the United States and abroad who, during the
7 period within one year of the date of the filing of the complaint, were
8 contacted or sued in the United States by either Collins Financial or
9 Nelson & Kennard in an effort to collect an alleged debt.

10 Further, the Complaint alleges that Collins "is a debt collector" that "routinely
11 attempts to collect consumer debts without spending the requisite time to verify the
12 debts and ensure the accuracy of information pertaining to the alleged debts." ¶33.
13 The Complaint also alleges that Collins is not "meaningfully engaged" in the
14 collection of debts. ¶30. In other words, Collins's debt collection practices are being
15 challenged. Thus, the duties and responsibilities of Collins's employees who
16 receive, maintain, and send data regarding alleged debts demonstrates Collins's debt
17 collection practices.

18 Collins also objects to Request No. 3 on the basis that the request is "vague
19 and ambiguous." Collins has failed to exercise reason and common sense to attribute
20 ordinary definitions to terms and phrases utilized in discovery. *Santana Row Hotel
21 Partners, L.P. v. Zurich Am. Ins. Co.*, 2007 U.S. Dist. LEXIS 31688 (N.D. Cal.
22 2007). Further, Collins has offered little to no meaningful facts to support the stated
23 objections. Thus, this boilerplate objection cannot be sustained.

24 Additionally, Collins claims that it does not receive, maintain or send date"
25 relating to alleged debts so it has no responsive documents. This cannot be true.
26 Because Collins is a firm that buys and sells debt obligations, there must be someone
27 within Collins who receives and sends information regarding alleged debts. Collins
28 appears to be hiding behind Paragon Way, even though Collins files debt collection
lawsuits in its own name.

1 But Collins cannot use its subsidiary to shield itself from discovery. Case law
 2 directly refutes Collins's position. "The discovery rules require that a corporation
 3 furnish such information as is available from the corporation itself or from sources
 4 under its control. If the corporation can obtain the information from sources under
 5 its control, it may not avoid answering by alleging ignorance." *Goodrich Corp. v.*
 6 *Emhart Indus.*, 2005 U.S. Dist. LEXIS 17190, *9 (C.D. Cal. 2005). Here, Paragon
 7 Way is a subsidiary directly under Collins's control and thus Collins has no basis for
 8 withholding information related to Paragon Way.

9 Further, Tourgeman specifically defined Collins to include "anyone else acting
 10 on Collins Financial Services, Inc.'s behalf." Because Paragon Way was acting to
 11 collect debts on Collins's behalf and is Collins's subsidiary, this document request
 12 should have accounted for Paragon Way. And, Collins, as the principal corporation,
 13 has control and possession of Paragon Way's documents. For instance, Collins
 14 agreed in its supplemental response to Interrogatory Nos. 13 and 20 to produce
 15 certain documents from Paragon Way. Therefore, Collins's response that it is not a
 16 debt collector is inadequate.

17 Accordingly, Tourgeman requests that this Court order Collins to provide a
 18 supplemental response to Request No. 3 without the stated objections, provide a
 19 substantive response, and produce any documents improperly withheld from
 20 production.

21 **DEFENDANTS' REASONS WHY NO FURTHER RESPONSE IS REQUIRED**
 22 **TO DOCUMENT REQUEST NO. 3:**

23 There is no basis for compelling a further response to this request because, as
 24 Defendant has already explained, Collins has no employees "receive, maintain, and
 25 send data regarding alleged debts" and therefore it has nothing to produce.
 26 Defendant has already explained that all data transfer functions are handled on behalf
 27 of Collins by non-party Paragon Way, Inc. If Tourgeman wants to seek further
 28

1 evidence from a non-party, Paragon Way, Inc., then he should obtain discovery using
2 an appropriate subpoena.

3 In any event, discovery regarding employees who “receive, maintain, and send
4 data regarding alleged debts” is not relevant to any claim at issue, nor likely to lead
5 to the discovery of admissible evidence. Tourgeman claims that Defendants sued
6 him for a debt that had already been paid “in full” to Dell, and that Defendants filed
7 suit against him in the wrong judicial district. He does not allege that his account
8 information was manipulated or mishandled by employees of Defendants who
9 “receive, maintain or send data about alleged debts.” Rather, Tourgeman claims that
10 Dell failed to credit all of his payments, and that his account information was already
11 inaccurate at the time it was transmitted to Defendants. No amount of discovery
12 about the employees who “receive, maintain and send data about debts” is going to
13 lead to admissible evidence bearing on whether Tourgeman paid Dell in full or
14 whether Defendants sued Tourgeman in the wrong district.

15 In an effort to avoid this dispute, Defendant has agreed to produce documents
16 responsive to this request maintained by Paragon Way, Inc., and Defendant has
17 offered to make a deponent from Collins and a deponent from Paragon Way available
18 for depositions. Rather than take the depositions, however, Tourgeman filed this
19 motion. His motion to compel should be denied.

20
21 **DOCUMENT REQUEST NO. 4:**

22 Please produce ALL DOCUMENTS that RELATE TO YOUR policies and
23 guidelines for investigating alleged debts.

24 **RESPONSE TO DOCUMENT REQUEST NO. 4:**

25 Defendant objects to this Request on the grounds that it is vague and
26 ambiguous as to the phrase “investigating alleged debts.” Defendant also objects to
27 this Request on the grounds that, based on Defendant’s understanding of its meaning,
28 the Request is overbroad, unduly burdensome and oppressive, and to the extent that

1 it seeks information which is not relevant to the subject matter of this lawsuit, nor
2 reasonably calculated to lead to the discovery of admissible evidence. By asking
3 Defendant to produce “ALL DOCUMENTS that RELATE TO YOUR policies and
4 guidelines for investigating alleged debts,” Plaintiff is potentially asking Defendant
5 to produce an enormous amount of documentation which will have no bearing on this
6 dispute. Defendant further objects to this Request to the extent that it seeks
7 proprietary information, trade secret information, information subject to protective
8 orders, confidentiality agreements, or statutory provisions that bar the disclosure of
9 that information without the consent of third parties and to the extent that it seeks
10 information subject to the attorney-client privilege or the attorney work product
11 doctrine.

12 Subject to and without waiving the forgoing objections or the General
13 Objections, Defendant responds that it is willing to meet and confer with Plaintiff in
14 order to understand the Request and to identify the scope of any potential production
15 of documents.

16 **SUPPLEMENTAL RESPONSE TO DOCUMENT REQUEST NO. 4:**

17 Defendant objects to this Request on the grounds that it is vague and
18 ambiguous as to the phrase “investigating alleged debts.” Defendant also objects to
19 this Request on the grounds that, based on Defendant’s understanding of its meaning,
20 the Request is overbroad, unduly burdensome and oppressive, and to the extent that
21 it seeks information which is not relevant to the subject matter of this lawsuit, nor
22 reasonably calculated to lead to the discovery of admissible evidence. Defendant
23 further objects to the extent that it seeks proprietary information, trade secret
24 information, information subject to protective orders, confidentiality agreements, or
25 statutory provisions that bar the disclosure of that information without the consent of
26 third parties and to the extent that it seeks information subject to the attorney-client
27 privilege or the attorney work product doctrine.
28

1 Subject to and without waiving the forgoing objections or the General
 2 Objections, Defendant responds as follows: Assuming that Plaintiff seeks
 3 information related to the due diligence process employed by Collins with respect to
 4 its purchase of debt portfolios, no such documents exist.

5 **PLAINTIFF’S REASONS TO COMPEL RESPONSE TO DOCUMENT**

6 **REQUEST NO. 4:**

7 Federal Rule of Civil Procedure 34(b)(2)(C) requires that “[a]n objection to
 8 part of a request must specify the part and permit inspection of the rest.”; *see also E.*
 9 *& J. Gallo Winery v. Cantine Rallo, S.p.A.*, 2006 U.S. Dist. LEXIS 42069, *3-4(E.D.
 10 Cal. 2006)(“If objection is made to part of an item or category, the part shall be
 11 specified and inspection permitted of the remaining parts. The party submitting the
 12 request may move for an order under Rule 37(a) with respect to any objection to or
 13 other failure to respond to the request or any part thereof, or any failure to permit
 14 inspection as requested.”). In *E. & J. Gallo Winery*, the court ordered the defendant
 15 to provide supplemental responses because the defendant’s original responses
 16 contained imprecise, boilerplate objections:

17 Defendant’s responses do not allow for meaningful evaluation. Plaintiff
 18 and the Court are unable to determine, with certainty, the requests for
 19 which Defendant is producing documents, the requests for which
 20 Defendant is withholding documents and on what basis, and the requests
 21 for which it has no responsive documents. Defendant cites boilerplate
 general objections, and does not explain why the objection applies to the
 response or whether documents were withheld pursuant to the stated
 objections.

22 Collins objects to Request No. 4 on the basis that it is “overbroad, unduly
 23 burdensome and oppressive” and “not relevant to the subject matter of this lawsuit,
 24 nor reasonably calculated to lead to the discovery of admissible evidence.” But
 25 Collins fails to provide any explanation for these objections. *Keith H. v. Long Beach*
 26 *Unified Sch. Dist.*, 228 F.R.D.652, 655-56 (C.D. Cal. 2005) (“The party who resists
 27 discovery has the burden to show discovery should not be allowed, and has the
 28 burden of clarifying, explaining, and supporting its objections.”). Moreover, because

1 Collins's response is so broad and unspecific, it is impossible to tell whether
 2 documents are being withheld on the basis of the stated objections, and/or whether
 3 responsive documents even exist.

4 Further, Federal Rule of Civil Procedure 26(b)(5) states that:

5 When a party withholds information otherwise discoverable by claiming
 6 that the information is privileged or subject to protection as trial-
 preparation material, the party must:

- 7 (i) expressly make the claim; and
- 8 (ii) describe the nature of the documents, communications, or tangible
 9 things not produced or disclosed—and do so in a manner that, without
 revealing information itself privileged or protected, will enable other
 10 parties to assess the claim.

11 “A privilege log should contain the following information: (1) the identity and
 12 position of its author; (2) the identity and position of the recipient(s); (3) the date it
 13 was prepared or written; (4) the title and description of the document; (5) the subject
 14 matter addressed; (6) the purposes for which it was prepared or communicated; (7)
 15 the document's present location; and (8) the specific privilege or other reason it is
 16 being withheld.” *Mancini v. Ins. Corp.*, 2009 U.S. Dist. LEXIS 51321, *10 (S.D.
 17 Cal. 2009). When asserting the attorney-client privilege, “[t]he party asserting the
 18 privilege bears the initial burden of demonstrating that the communication falls
 19 within the privilege.” *Bible v. Rio Props., Inc.*, 246 F.R.D. 614, 620 (C.D. Cal.
 20 2007).

21 Here, Collins asserts the attorney-client privilege and attorney work product
 22 protection to Request No. 4. The objection is stated simply as “seek[ing] information
 23 subject to the attorney-client privilege or the attorney work product doctrine.” Such
 24 a blanket assertion of the attorney-client privilege or work product doctrine is
 25 insufficient to enable the propounding party to assess the applicability of the
 26 privilege or protection to the specific facts of the interrogatory in question. Further,
 27 Collins has failed to produce a privilege log containing any of the above-described
 28

1 information as required by Federal Rule of Civil Procedure 26(b)(5). (Weaver Dec.
2 ¶13). Consequently, the privilege claims cannot be properly evaluated.

3 Collins objects to Request No. 4 on the basis that the term “investigating
4 alleged debt” is vague and ambiguous. Collins, however, has failed to exercise
5 reason and common sense to attribute ordinary definitions to terms and phrases
6 utilized in discovery. *Santana Row Hotel Partners, L.P. v. Zurich Am. Ins. Co.*, 2007
7 U.S. dist. LEXIS 31688 (N.D. Cal. 2007). Further, Collins has offered no
8 meaningful facts to support the stated objections. Thus, this boilerplate objection
9 cannot be sustained.

10 Collins also claims that no responsive documents exist. This is unlikely.
11 Because Collins is a firm that buys and sells debt obligations, there must be
12 documents related to Collins’s policies and guidelines for investigating debts.
13 Collins appears to be hiding behind its subsidiary, Paragon Way, even though
14 Collins files debt collection lawsuits against alleged debtors in its own name.

15 But Collins cannot use its subsidiary to shield itself from discovery. Case law
16 directly refutes Collins’s position. “The discovery rules require that a corporation
17 furnish such information as is available from the corporation itself or from sources
18 under its control. If the corporation can obtain the information from sources under
19 its control, it may not avoid answering by alleging ignorance.” *Goodrich Corp. v.*
20 *Emhart Indus.*, 2005 U.S. Dist. LEXIS 17190, *9 (C.D. Cal. 2005). Here, Paragon
21 Way is a subsidiary directly under Collins’s control and thus Collins has no basis for
22 withholding information related to Paragon Way

23 Further, Tourgeman specifically defined Collins to include “anyone else acting
24 on Collins Financial Services, Inc.’s behalf.” Because Paragon Way was acting to
25 collect debts on Collins’s behalf and is Collins’s subsidiary, this document request
26 should have accounted for Paragon Way. And, Collins, as the principal corporation,
27 has control and possession of Paragon Way’s documents. For instance, Collins
28 agreed in its supplemental response to Interrogatory No. 13 and 20 to produce certain

documents from Paragon Way. Since Collins's debt collection practices as a whole are being challenged, documents related to Collins's or Paragon Way's policies and guidelines for investigating alleged debt must be produced.

Accordingly, Tourgeman requests that this Court order Collins provide a supplemental response to Request No. 4 without the stated objections, provide a substantive response, and produce any documents improperly withheld from production.

DEFENDANTS' REASONS WHY NO FURTHER RESPONSE IS REQUIRED TO DOCUMENT REQUEST NO. 4:

Discovery about Defendant's "investigation" of debts is not proper because the FDCPA does not impose a duty on collectors to independently investigate and verify debts before the initiate the collection process. Even though the law does not impose such a duty, Defendants have no business interest in seeking to collect money from debtors that do not owe it. Defendants do have procedures in place to prevent any attempt to collect debts that have already been paid, and they have provided this information to Tourgeman already. There is no basis for compelling a further response.

The FDCPA does not require a debt collector to independently verify the validity of a debt before attempting to collect it. Instead, the FDCPA allows a collector to assume the debt is valid, unless the debtor submits a timely dispute to the collector. *See* 15 U.S.C. § 1692g(a)(3) (collector must notify consumer that debt will be assumed valid unless consumer disputes validity of debt within 30 days of receipt of notice); *Smith v. Transworld Sys., Inc.*, 953 F.2d 1025, 1032 (6th Cir. 1992) (FDCPA does not require collector to independently investigate debt referred for collection); *Hyman v. Tate*, 362 F.3d 965, 968 (7th Cir. 2004) (FDCPA does not require collector to independently verify validity of debt to qualify for "bona fide error" defense). Here, non-party Paragon Way, Inc. and Nelson & Kennard both sent

1 notices to Tourgeman advising him of his right to dispute the debt, but Tourgeman
2 never responded.¹

3 If Tourgeman is arguing that discovery about Defendants' "investigating" of
4 debts is relevant to show that Defendants did not have possession of sufficient
5 evidence to prove their case before the collection suit was filed, his requests are
6 improper as this Court has already rejected this theory of recovery.²

7 Defendants have provided discovery on the procedures used to ensure that
8 they are filing suit on valid debts and are filing suit in the correct judicial district.
9 The motion should be denied as to this request.

10
11 **DOCUMENT REQUEST NO. 5:**

12 Please produce ALL DOCUMENTS that RELATE TO YOUR policies and
13 guidelines for filing a lawsuit against an alleged debtor.

14 **RESPONSE TO DOCUMENT REQUEST NO. 5:**

15 Subject to and without waiving the General Objections, Defendant does not
16 file lawsuits. Law firms are retained to file suit on its behalf. Defendant does not
17 maintain documents reflecting guidelines or policies for filing lawsuits.

18 **PLAINTIFF'S REASONS TO COMPEL RESPONSE TO DOCUMENT**
19 **REQUEST NO. 5:**

20 Collins sued Tourgeman in San Diego Superior Court under its own name to
21

22
23 ¹ See Declaration of Howard Knauer In Support Of Motion For Summary
24 Judgment (Docket 75), ¶ 5, Ex. B; Declaration of Jonathan E. Ayers In Support Of
Motion For Summary Judgment (Docket 73), ¶ 4, Ex. B.

25 ² See Order Granting In Part And Denying In Part Defendant's Motion To Dismiss
26 And Motion To Strike (Docket 58), at 7 ("[T]he filing of a lawsuit, even if a plaintiff
27 does not have the means of proving the case at filing or does not ultimately prevail, has
28 not by itself been considered harassment or abuse under the FDCPA. See, e.g., *Heintz*
v. Jenkins, 514 U.S. 291, 296 (1995); *Harvey v. Great Seneca Financial Corp.*, 453 F.3d
324, 330 (6th Cir. 2006).

1 collect on an alleged debt. In fact, Collins has filed more than 300 cases under its
2 own name during the class period in the San Diego Superior Court alone. (Weaver
3 Dec. ¶14). Here, Collins erroneously contends it does not file lawsuits.

4 Collins also claims that no responsive documents exist. This is unlikely.
5 Because Collins is a firm that buys and sells debt obligations, there must be
6 documents related to Collins's policies and guidelines for filing lawsuits against
7 alleged debtors. Collins appears to be hiding behind its subsidiary, Paragon Way,
8 even though it files collection lawsuits against alleged debtors in its own name.

9 But Collins cannot use its subsidiary to shield itself from discovery. Case law
10 directly refutes Collins's position. "The discovery rules require that a corporation
11 furnish such information as is available from the corporation itself or from sources
12 under its control. If the corporation can obtain the information from sources under
13 its control, it may not avoid answering by alleging ignorance." *Goodrich Corp. v.*
14 *Emhart Iudus.*, 2005 U.S. Dist. LEXIS 17190, *9 (C.D. Cal. 2005). Here, Paragon
15 Way is a subsidiary directly under Collins's control and thus Collins has no basis for
16 withholding information related to Paragon Way.

17 Further, Tourgeman specifically defined Collins to include "anyone else acting
18 on Collins Financial Services, Inc.'s behalf." Because Paragon Way was acting to
19 collect debts on Collins's behalf and is Collins's subsidiary, this document request
20 should have accounted for Paragon Way. And, Collins, as the principal corporation,
21 has control and possession of Paragon Way's documents. For instance, Collins
22 agreed in its supplemental response to Interrogatory Nos. 13 and 20 to produce
23 certain documents from Paragon Way. Therefore, Collins's response that no such
24 documents exist is insufficient.

25 Accordingly, Tourgeman requests that this Court order Collins to provide a
26 supplemental response to Request No. 6 and produce any documents improperly
27 withheld from production.
28

**DEFENDANTS' REASONS WHY NO FURTHER RESPONSE IS REQUIRED
TO DOCUMENT REQUEST NO. 5:**

There is no basis for compelling a further response to this request because, as Defendant has already explained, Collins has no "policies and guidelines for filing lawsuits" against debtors, and therefore it has nothing to produce. Defendant has already explained that the management of all collection litigation is handled on behalf of Collins by non-party Paragon Way, Inc. If Tourgeman wants to seek further evidence from a non-party, Paragon Way, Inc., then he should obtain discovery using an appropriate subpoena.

In an effort to avoid this dispute, Defendant has responded to this request, has agreed to produce responsive documents of Paragon Way, and has produced responsive documents in the possession of Nelson & Kennard. It has also offered to have a Collins witness, a Paragon Way witness, and a Nelson & Kennard witness deposed. Rather than taking those depositions, Tourgeman has filed a motion compelling further responses. The motion should be denied.

DOCUMENT REQUEST NO. 6:

Please produce ALL DOCUMENTS that RELATE TO YOUR 1692g notices, including but not limited to every sample collection letter YOU send to alleged debtors.

RESPONSE TO DOCUMENT REQUEST NO. 6:

Subject to and without waiving the General Objections, Defendant responds as follows: Collins does not communicate with debtors regarding debts and therefore does not send notices to debtors pursuant to section 1692g of the FDCPA.

**PLAINTIFF'S REASONS TO COMPEL RESPONSE TO DOCUMENT
REQUEST NO. 6:**

Collins sued Tourgeman in San Diego Superior Court under its own name to collect on an alleged debt. In fact, Collins has filed more than 300 cases under its

1 own name during the class period in the San Diego Superior Court alone. (Weaver
2 Dec. ¶14). Collins now erroneously contends it “does not communicate with debtors
3 regrading debts and therefore does not send notices to debtors pursuant to section
4 1692g of the FDCPA.” But because Collins is a firm that buys and sells debt
5 obligations, Collins or someone acting on its behalf must communicate with debtors.
6 Collins appears to be hiding behind its subsidiary, Paragon Way, even though it files
7 collection lawsuits against alleged debtors in its own name.

8 But Collins cannot use its subsidiary to shield itself from discovery. Case law
9 directly refutes Collins’s position. “The discovery rules require that a corporation
10 furnish such information as is available from the corporation itself or from sources
11 under its control. If the corporation can obtain the information from sources under
12 its control, it may not avoid answering by alleging ignorance.” *Goodrich Corp. v.*
13 *Emhart Iudus.*, 2005 U.S. Dist. LEXIS 17190, *9 (C.D. Cal. 2005). Here, Paragon
14 Way is a subsidiary directly under Collins’s control and thus Collins has no basis for
15 withholding information related to Paragon Way.

16 Further, Tourgeman specifically defined Collins to include “anyone else acting
17 on Collins Financial Services, Inc.’s behalf.” Because Paragon Way was acting to
18 collect debts on Collins’s behalf and is Collins’s subsidiary, this document request
19 should have accounted for Paragon Way. And, Collins, as the principal corporation,
20 has control and possession of Paragon Way’s documents. For instance, Collins
21 agreed in its supplemental response to Interrogatory Nos. 13 and 20 to produce
22 certain documents from Paragon Way. Therefore, Collins’s response that no such
23 documents exist is insufficient.

24 Accordingly, Tourgeman requests that this Court order Collins to provide a
25 supplemental response to Request No. 6 and produce any documents improperly
26 withheld from production.

**DEFENDANTS' REASONS WHY NO FURTHER RESPONSE IS REQUIRED
TO DOCUMENT REQUEST NO. 6:**

Defendant cannot produce documents that do not exist. Collins does not send any section 1692g notices so it has nothing to produce. There is nothing to compel.

In addition, there is no basis for compelling a further response to this request because documents relating to section 1692g notices are not relevant to any claim at issue, nor likely to lead to the discovery of admissible evidence. In fact, the Court previously dismissed the claim that alleged Defendants had not sent Tourgeman a notice under section 1692g of the FDCPA. *See Order Granting In Part And Denying In Part Defendant's Motion To Dismiss And Motion To Strike (Docket 58)*, at 6. Tourgeman's Second Amended Complaint does not allege that Defendants sent him any collection letters.

There is no basis for seeking discovery on a dismissed claim. Nor is there any basis for compelling documents that do not exist. The motion should be denied as to this request.

DOCUMENT REQUEST NO. 7:

Please produce ALL form letters, enclosures, envelopes, complaints, memoranda, etc. used by COLLINS in YOUR debt collection activity.

RESPONSE TO DOCUMENT REQUEST NO. 7:

Subject to and without waiving the General Objections, Defendant responds as follows: Collins does not communicate with debtors regarding debts and therefore has no responsive documents.

**PLAINTIFF'S REASONS TO COMPEL RESPONSE TO DOCUMENT
REQUEST NO. 7:**

Collins sued Tourgeman in San Diego Superior Court under its own name to collect on an alleged debt. In fact, Collins has filed more than 300 cases under its own name during the class period in the San Diego Superior Court alone. (Weaver

1 Dec. ¶14). Based on this information, Tourgeman propounded document requests
2 and special interrogatories on Collins. Collins now erroneously contends it “does not
3 communicate with debtors regarding debts and therefore has no responsive
4 documents.” However, because Collins is a firm that buys and sells debt obligations,
5 Collins or someone acting on its behalf must communicate with debtors. Collins
6 appears to be hiding behind its subsidiary, Paragon Way, even though it files
7 collection lawsuits against alleged debtors in its own name.

8 But Collins cannot use its subsidiary to shield itself from discovery. Case law
9 directly refutes Collins’s position. “The discovery rules require that a corporation
10 furnish such information as is available from the corporation itself or from sources
11 under its control. If the corporation can obtain the information from sources under
12 its control, it may not avoid answering by alleging ignorance.” *Goodrich Corp. v.*
13 *Emhart Iudus.*, 2005 U.S. Dist. LEXIS 17190, *9 (C.D. Cal. 2005). Here, Paragon
14 Way is a subsidiary directly under Collins’s control and thus Collins has no basis for
15 withholding information related to Paragon Way.

16 Further, Tourgeman specifically defined Collins to include “anyone else acting
17 on Collins Financial Services, Inc.’s behalf.” Because Paragon Way was acting to
18 collect debts on Collins’s behalf and is Collins’s subsidiary, this document request
19 should have accounted for Paragon Way. And, Collins, as the principal corporation,
20 has control and possession of Paragon Way’s documents. For instance, Collins
21 agreed in its supplemental response to Interrogatory Nos. 13 and 20 to produce
22 certain documents from Paragon Way. Therefore, Collins’s response that no such
23 documents exist is insufficient.

24 Accordingly, Tourgeman requests that this Court order Collins to provide a
25 supplemental response to Request No. 7 and produce any documents improperly
26 withheld from production.

DEFENDANTS' REASONS WHY NO FURTHER RESPONSE IS REQUIRED
TO DOCUMENT REQUEST NO. 7:

Defendant has already explained that Collins does not communicate with debtors, so it has no documents to produce. There is no basis for order the production of non-existent documents.

In any event, the discovery is improper. There is no basis for compelling a further response because information about “form letters, enclosures, envelopes, complaints, memoranda, etc” is not relevant to any claim at issue, nor likely to lead to the discovery of admissible evidence. Tourgeman claims that Defendants sued him for a debt that had already been paid “in full” to Dell, and that Defendants filed suit against him in the wrong judicial district. He has not challenged any of the “forms” used in collection letters, enclosures, envelopes, complaints or memoranda.

Tourgeman suggests this request is proper because he seeks to represent a purported FDCPA class of all persons who were “contacted or sued” by Defendants, and therefore “all” of Defendants’ collection practices are at issue. He is wrong. The FDCPA does not prohibit collectors from contacting consumers, nor does it bar collectors from filing suits. Rather, the Act prohibits collectors from engaging in a specific set of unlawful collection practices. *See* 15 U.S.C. §§ 1692b-1692j. In fact, the Ninth Circuit has repeatedly recognized the Act was passed to protect consumers from serious threats, harassment, abuse and other deceptive practices utilized by unscrupulous collectors. *See* 15 U.S.C. § 1692; *Pressley v. Capital Credit and Collection*, 760 F.2d 922, 925 (9th Cir. 1985) (purpose of Act “is to protect consumers from a host of unfair, harassing, and deceptive debt collection practices without imposing unnecessary restrictions on ethical debt collectors”) (citation omitted). It is not a wholesale ban on any type of contact with a debtor, nor does it prohibit collectors from filing suit. The focus of the Act is prevention of deceptive and intimidating conduct by collectors that would “seriously disrupt a debtor’s life”:

1 The purpose of the FDCPA is to protect vulnerable and unsophisticated
 2 debtors from abuse, harassment and deceptive collection practices. . . .
 3 Congress was concerned with disruptive, threatening, and dishonest tactics.
 4 The Senate Report accompanying the Act cites practices such as ‘threats of
 5 violence, telephone calls at unreasonable hours [and] misrepresentation of
 consumer’s legal rights.’ (Citation). **In other words, Congress seems to have
 contemplated the type of actions that would intimidate unsophisticated
 individuals and which, in the words of the Seventh Circuit, ‘would likely
 disrupt a debtor’s life.’** (Citation).

6 *Guerrero v. RJM Acquisitions LLC*, 499 F.3d 926, 938-39 (9th Cir. 2007) (emphasis
 7 added).

8 Tourgeman cannot seek discovery regarding every debtor “contacted or sued”
 9 by Defendants unless he identifies how the “contacts” or “suits” allegedly violated
 10 the FDCPA. In *Donohue v. Quick Collect, Inc.*, 592 F.3d 1027 (9th Cir. 2010), the
 11 Ninth Circuit held that an allegedly false and misleading statement by a collector
 12 does not violate the FDCPA unless it is “material.” *Id.* At 1033-34. A “material”
 13 misstatement is one that is “genuinely misleading” and that “may frustrate the
 14 consumer’s ability to intelligently choose his or her response” to the collector’s
 15 communication. *Id.* at 1034. The Court noted that:

16 In assessing FDCPA liability, **we are not concerned with mere technical**
 17 **falsehoods that mislead no one**, but instead with genuinely misleading
 18 statements that may frustrate a consumer’s ability to intelligently choose his or
 her response. **Here, the statement in the Complaint did not undermine**
Donohue’s ability to intelligently choose her action concerning her debt.

19 *Id.* at 1034 (emphasis added).

20 Tourgeman claims that Defendants sued him for a debt that was paid “in full”
 21 and filed suit in the wrong judicial district. He is entitled to discovery related to
 22 those claims. His request for request for information about “form letters, enclosures,
 23 envelopes, complaints, memoranda, etc” is not relevant to his claims, nor will it
 24 identify the number of class members.

25 **DOCUMENT REQUEST NO. 8:**

26 Please produce ALL DOCUMENTS YOU relied upon to verify Plaintiff David
 27 Tourgeman’s alleged debt.
 28

RESPONSE TO DOCUMENT REQUEST NO. 8:

Defendant objects to this Request on the grounds that it is vague and ambiguous as to the term “verify.” Subject to and without waiving the forgoing objections or the General Objections, Defendant will produce non-privileged documents in its possession, custody or control that relate to Plaintiff, his account and the defenses asserted in this action.

PLAINTIFF’S REASONS TO COMPEL RESPONSE TO DOCUMENT REQUEST NO. 8:

Collins objects to Request No. 8 on the basis that the term “verify” is “vague and ambiguous.” Collins, however, has failed to exercise reason and common sense to attribute ordinary definitions to terms and phrases utilized in discovery. *Santana Row Hotel Partners,, L.P. v. Zurich Am. Inc. Co.*, 2007 U.S. Dist. LEXIS 31688 (N.D. Cal. 2007). “Verify” is a common English word that should not preclude Collins from providing a substantive response. Further, Collins has offered no meaningful facts to support the stated objection. Thus, this boilerplate objection cannot be sustained.

This request seeks documents Collins relied upon in its determination that Tourgeman owed the alleged debt in Case No. 37-2007-00072265-CL-CL-CTL. Collins has not made a good faith attempt to provide a response despite the clear language of the request.

Accordingly, Tourgeman requests that this Court order Collins to provide a supplemental response to Request No. 8 without the stated objection, provide a substantive response, and produce any documents improperly withheld from production.

DEFENDANTS’ REASONS WHY NO FURTHER RESPONSE IS REQUIRED TO DOCUMENT REQUEST NO. 8:

Defendant has agreed to produce, and has already produced, responsive documents. Defendants have also offered to make witnesses available to testify

1 about, *inter alia*, the handling of Tourgeman's account. There is no basis for
2 compelling a further response.

3
4 **DOCUMENT REQUEST NO. 9:**

5 Please produce ALL DOCUMENTS that RELATE TO COLLINS' collection
6 practices and procedures.

7 **RESPONSE TO DOCUMENT REQUEST NO. 9:**

8 Subject to and without waiving the General Objections, Defendant responds as
9 follows: Collins is not a debt collector and it does not engage in the collection of
10 debts. It has no collection practices or procedures and therefore has no documents to
11 produce.

12 **PLAINTIFF'S REASONS TO COMPEL RESPONSE TO DOCUMENT**
13 **REQUEST NO. 9:**

14 Collins sued Tourgeman in San Diego Superior Court under its own name to
15 collect on an alleged debt. In fact, Collins has filed more than 300 cases under its
16 own name during the class period in the San Diego Superior Court alone. (Weaver
17 Dec. ¶14). Based on this information, Tourgeman propounded document requests
18 and special interrogatories on Collins. Collins erroneously contends that it is not a
19 debt collector. Collins appears to be hiding behind its subsidiary, Paragon Way,
20 even though it files collections lawsuits against alleged debtors in its own name.

21 But Collins cannot use its subsidiary to shield itself from discovery. Case law
22 directly refutes Collins's position. "The discovery rules require that a corporation
23 furnish such information as is available from the corporation itself or from sources
24 under its control. If the corporation can obtain the information from sources under
25 its control, it may not avoid answering by alleging ignorance." *Goodrich Corp. v.*
26 *Emhart Indus.*, 2007 U.S. Dist. LEXIS 17190, *9 (C.D. Cal. 2005). Here, Paragon
27 Way is a subsidiary directly under Collins's control and thus Collins has no basis for
28 withholding information related to Paragon Way.

Further, Tourgeman specifically defined Collins to include “anyone else acting on Collins Financial Services, Inc.’s behalf.” Because Paragon Way was acting to collect debts on Collins’s behalf and is Collins’s subsidiary, this document request should have accounted for Paragon Way. And, Collins, as the principal corporation, has control and possession of Paragon Way’s documents. For instance, Collins agreed in its supplemental response to Interrogatory No. 13 and 20 to produce certain documents from Paragon Way. Therefore, Collins’s response that no such documents exist is insufficient.

Accordingly, Tourgeman requests that this Court order Collins to provide a supplemental response to Request No. 9 and produce any documents improperly withheld from production.

DEFENDANTS’ REASONS WHY NO FURTHER RESPONSE IS REQUIRED TO DOCUMENT REQUEST NO. 9:

Defendant has already explained that it is not a debt collector and that it has no responsive documents. Tourgeman has also been informed that all collection functions are handled by non-party Paragon Way, Inc., and he can seek documents from Paragon through a proper subpoena. In an attempt to avoid this dispute, Defendant has produced responsive documents maintained by Paragon Way, and it has offered to make its witness, a Paragon Way witness, and a witness from Nelson & Kennard available for depositions. Rather than take the depositions, Tourgeman cancelled them and filed this motion.

In addition, this request for “all” documents relating to “collection practices and procedures” is incredibly overbroad, and Tourgeman has refused to narrow it. Tourgeman suggests this request is proper because he seeks to represent a purported FDCPA class of all persons who were “contacted or sued” by Defendants, and therefore “all” of Defendants’ collection practices are at issue. He is wrong. The FDCPA does not prohibit collectors from contacting consumers, nor does it bar collectors from filing suits. Rather, the Act prohibits collectors from engaging in a

specific set of unlawful collection practices. *See* 15 U.S.C. §§ 1692b-1692j. In fact, the Ninth Circuit has repeatedly recognized the Act was passed to protect consumers from serious threats, harassment, abuse and other deceptive practices utilized by unscrupulous collectors. *See* 15 U.S.C. § 1692; *Pressley v. Capital Credit and Collection*, 760 F.2d 922, 925 (9th Cir. 1985) (purpose of Act “is to protect consumers from a host of unfair, harassing, and deceptive debt collection practices without imposing unnecessary restrictions on ethical debt collectors”) (citation omitted). It is not a wholesale ban on any type of contact with a debtor, nor does it prohibit collectors from filing suit. The focus of the Act is prevention of deceptive and intimidating conduct by collectors that would “seriously disrupt a debtor’s life”:

The purpose of the FDCPA is to protect vulnerable and unsophisticated debtors from abuse, harassment and deceptive collection practices. . . . Congress was concerned with disruptive, threatening, and dishonest tactics. The Senate Report accompanying the Act cites practices such as ‘threats of violence, telephone calls at unreasonable hours [and] misrepresentation of consumer’s legal rights.’ (Citation). **In other words, Congress seems to have contemplated the type of actions that would intimidate unsophisticated individuals and which, in the words of the Seventh Circuit, ‘would likely disrupt a debtor’s life.’** (Citation).

Guerrero v. RJM Acquisitions LLC, 499 F.3d 926, 938-39 (9th Cir. 2007) (emphasis added).

Tourgeman cannot seek discovery regarding every debtor “contacted or sued” by Defendants unless he identifies how the “contacts” or “suits” allegedly violated the FDCPA. In *Donohue v. Quick Collect, Inc.*, 592 F.3d 1027 (9th Cir. 2010), the Ninth Circuit held that an allegedly false and misleading statement by a collector does not violate the FDCPA unless it is “material.” *Id.* At 1033-34. A “material” misstatement is one that is “genuinely misleading” and that “may frustrate the consumer’s ability to intelligently choose his or her response” to the collector’s communication. *Id.* at 1034. The Court noted that:

In assessing FDCPA liability, **we are not concerned with mere technical falsehoods that mislead no one**, but instead with genuinely misleading statements that may frustrate a consumer’s ability to intelligently choose his or her response. **Here, the statement in the Complaint did not undermine Donohue’s ability to intelligently choose her action concerning her debt.**

1 *Id.* at 1034 (emphasis added).

2 Tourgeman claims that Defendants sued him for a debt that was paid “in full”
3 and filed suit in the wrong judicial district. He is entitled to discovery related to
4 those claims. His request for documents relating to “all collection practices and
5 procedures” should be denied.

6
7 **DOCUMENT REQUEST NO. 10:**

8 Please produce ALL DOCUMENTS that RELATE TO financial arrangements
9 between YOU and NELSON.

10 **RESPONSE TO DOCUMENT REQUEST NO. 10:**

11 Defendant objects to this Request on the grounds that it is vague and
12 ambiguous as to the term “financial arrangements.” Subject to and without waiving
13 the forgoing objection or the General Objections, Defendant responds as follows:
14 Collins does not have a financial arrangements with the firm.

15 **PLAINTIFF’S REASONS TO COMPEL RESPONSE TO DOCUMENT**
16 **REQUEST NO. 10:**

17 Collins objects to Request No. 10 on the basis that the term “financial
18 arrangements” is “vague and ambiguous.” Collins, however, has failed to exercise
19 reason and common sense to attribute ordinary definitions to terms and phrases
20 utilized in discovery. *Santana Row Hotel Partners,, L.P. v. Zurich Am. Inc. Co.*,
21 2007 U.S. Dist. LEXIS 31688 (N.D. Cal. 2007). “Financial arrangements” are
22 common English words that should not preclude Collins from providing a
23 substantive response. Further, Collins has offered no meaningful facts to support the
24 stated objection. Thus, this boilerplate objection cannot be sustained.

25 Collins sued Tourgeman in San Diego Superior Court under its own name to
26 collect on an alleged debt. In fact, Collins has filed more than 300 cases under its
27 own name during the class period in the San Diego Superior Court alone. (Weaver
28 Dec. ¶14). Collins retained Nelson to bring suit against Tourgeman for an alleged

1 debt. Collins must have provided compensation to Nelson for services rendered.
2 Collins erroneously contends that it does not have financial arrangements with
3 Nelson. Collins appears to be hiding behind its subsidiary, Paragon Way, even
4 though Collins files collection lawsuits against alleged debtors in its own name.

5 But Collins cannot use its subsidiary to shield itself from discovery. Case law
6 directly refutes Collins's position. "The discovery rules require that a corporation
7 furnish such information as is available from the corporation itself or from sources
8 under its control. If the corporation can obtain the information from sources under
9 its control, it may not avoid answering by alleging ignorance." *Goodrich Corp. v.*
10 *Emhart Indus.*, 2007 U.S. Dist. LEXIS 17190, *9 (C.D. Cal. 2005). Here, Paragon
11 Way is a subsidiary directly under Collins's control and thus Collins has no basis for
12 withholding information related to Paragon Way.

13 Further, Tourgeman specifically defined Collins to include "anyone else acting
14 on Collins Financial Services, Inc.'s behalf." Because Paragon Way was acting to
15 collect debts on Collins's behalf and is Collins's subsidiary, this document request
16 should have accounted for Paragon Way. And, Collins, as the principal corporation,
17 has control and possession of Paragon Way's documents. For instance, Collins
18 agreed in its supplemental response to Interrogatory No. 13 and 20 to produce certain
19 documents from Paragon Way. Therefore, Collins's response that no such
20 documents exist is insufficient.

21 Accordingly, Tourgeman requests that this Court order Collins to provide a
22 supplemental response to Request No. 10 without the stated objections, provide a
23 substantive response, and produce any documents improperly withheld from
24 production.

25 **DEFENDANTS' REASONS WHY NO FURTHER RESPONSE IS REQUIRED**
26 **TO DOCUMENT REQUEST NO. 10:**

27 Defendant has already responded and explained that it has no financial
28 arrangements with the Nelson & Kennard firm, so it has nothing to produce. There is

1 no basis for seeking to compel production of documents that do not exist. Defendant
2 has also explained that non-party Paragon Way has an agreement with Nelson &
3 Kennard that relates to the collection of debts, and that agreement has been produced
4 already. The motion to compel a document that has already been produced to
5 Tourgeman is frivolous.

6
7 **DOCUMENT REQUEST NO. 11:**

8 Please produce ALL DOCUMENTS that RELATE TO the financial
9 arrangement between YOU and Dell Financial Services, Inc. - including any of its
10 past or present agents, employees, representatives, attorneys, accountants,
11 investigators, assigns, subsidiaries, or parent companies, predecessors-in-interest,
12 successors-in-interest, affiliates, or anyone else acting on Dell Financial Services,
13 Inc.'s behalf.

14 **RESPONSE TO DOCUMENT REQUEST NO. 11:**

15 Defendant objects to this Request on the grounds that it is vague and
16 ambiguous as to the term "financial arrangements." Defendant also objects to this
17 Request on the grounds that it is overbroad, unduly burdensome and oppressive, and
18 to the extent that it seeks information which is not relevant to the subject matter of
19 this lawsuit, nor reasonably calculated to lead to the discovery of admissible
20 evidence. Defendant further objects to this Request to the extent that it seeks
21 proprietary information, trade secret information, information subject to protective
22 orders, confidentiality agreements, or statutory provisions that bar the disclosure of
23 that information without the consent of third parties.

24 Subject to and without waiving the forgoing objections or the General
25 Objections, Defendant responds that it is willing to meet and confer with Plaintiff in
26 order to understand the Request and to identify the scope of any potential production
27 of documents.

PLAINTIFF'S REASONS TO COMPEL RESPONSE TO DOCUMENT**REQUEST NO. 11:**

Federal Rule of Civil Procedure 34(b)(2)(C) requires that “[a]n objection to part of a request must specify the part and permit inspection of the rest.”; *see also E. & J. Gallo Winery v. Cantine Rallo, S.p.A.*, 2006 U.S. Dist. LEXIS 42069, *3-4(E.D. Cal. 2006)(“If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.”). In *E. & J. Gallo Winery*, the court ordered the defendant to provide supplemental responses because the defendant’s original responses contained imprecise, boilerplate objections:

Defendant’s responses do not allow for meaningful evaluation. Plaintiff and the Court are unable to determine, with certainty, the requests for which Defendant is producing documents, the requests for which Defendant is withholding documents and on what basis, and the requests for which it has no responsive documents. Defendant cites boilerplate general objections, and does not explain why the objection applies to the response or whether documents were withheld pursuant to the stated objections.

Collins objects to Request No. 11 on the basis that it is “overbroad, unduly burdensome and oppressive” and “not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of admissible evidence.” But Collins fails to provide any explanation for these objections. *Keith H. v. Long Beach Unified Sch. Dist.*, 228 F.R.D.652, 655-56 (C.D. Cal. 2005) (“The party who resists discovery has the burden to show discovery should not be allowed, and has the burden of clarifying, explaining, and supporting its objections.”). Moreover, because Collins’s response is so broad and unspecific, it is impossible to tell whether documents are being withheld on the basis of the stated objections, and/or whether responsive documents even exist.

Collins also objects to Request No. 11 on the basis that the term “financial arrangements” is “vague and ambiguous.” Collins, however, has failed to exercise reason and common sense to attribute ordinary definitions to terms and phrases utilized in discovery. *Santana Row Hotel Partners,, L.P. v. Zurich Am. Inc. Co.*, 2007 U.S. Dist. LEXIS 31688 (N.D. Cal. 2007). “Financial arrangements” are common English words that should not preclude Collins from providing a substantive response. Further, Collins has offered no meaningful facts to support the stated objection. Thus, this boilerplate objection cannot be sustained.

Lastly, Collins offers to meet and confer regarding this discovery request. The parties met and conferred but reached an impasse – Collins refused to provide any documentation evidencing its financial arrangements with Dell. (Weaver Dec. ¶18). Thus, Collins’s offer to meet and confer was an empty offer because, from the outset, it had no intention of producing any of the requested documents.

Accordingly, Tourgeman requests that this Court order Collins to provide a supplemental response to Request No. 11 without the stated objections, provide a substantive response, and produce any documents improperly withheld from production.

DEFENDANTS’ REASONS WHY NO FURTHER RESPONSE IS REQUIRED TO DOCUMENT REQUEST NO. 11:

Defendant has already produced a copy of the contract between Collins and Dell that relates to the acquisition of Tourgeman’s account, as well as all the data that was transmitted regarding Tourgeman’s account at the time of transfer. There is no basis for seeking all other documents relating to “financial arrangements” with Dell, and Tourgeman has refused to explain why he wants this information or how it bears upon the claims he has asserted. He claims that Defendants sought to collect a debt that had already been paid “in full” to Dell, and that Defendants filed suit against him in the wrong judicial district. None of his claims relate to “financial arrangements” between Collins and Dell. The only potentially relevant and

1 responsive document is the purchase and sale agreement with Dell that has already
2 been produced. The motion should be denied as to this request.

3
4 **DOCUMENT REQUEST NO. 12:**

5 Please produce ALL DOCUMENTS pertaining to the number of alleged
6 debtors that YOU filed complaints against from July 31, 2007 to the present.

7 **RESPONSE TO DOCUMENT REQUEST NO. 12:**

8 Collins does not file complaints against debtors. Law firms are retained to file
9 complaints against debtors. Thus Collins does not have any documents that are
10 responsive to this Request.

11 **PLAINTIFF'S REASONS TO COMPEL RESPONSE TO DOCUMENT**
12 **REQUEST NO. 12:**

13 Collins sued Tourgeman in San Diego Superior Court under its own name to
14 collect on an alleged debt. In fact, Collins has filed more than 300 cases under its
15 own name during the class period in the San Diego Superior Court alone. (Weaver
16 Dec. ¶14). Based on this information, Tourgeman propounded document requests
17 and special interrogatories on Collins. Collins erroneously contends it does not file
18 lawsuits.

19 Collins also claims that no responsive documents exist. This is unlikely.
20 Because Collins is a firm that buys and sells debt obligations, there must be
21 documents related to the number of alleged debtors that Collins, or someone acting
22 on Collins's behalf, filed lawsuits against. Collins appears to be hiding behind its
23 subsidiary, Paragon Way, even though it files collection lawsuits against alleged
24 debtors in its own name.

25 But Collins cannot use its subsidiary to shield itself from discovery. Case law
26 directly refutes Collins's position. "The discovery rules require that a corporation
27 furnish such information as is available from the corporation itself or from sources
28 under its control. If the corporation can obtain the information from sources under

its control, it may not avoid answering by alleging ignorance.” *Goodrich Corp. v. Emhart Indus.*, 2005 U.S. Dist. LEXIS 17190, *9 (C.D. Cal. 2005). Here, Paragon Way is a subsidiary directly under Collins’s control and thus Collins has no basis for withholding information related to Paragon Way.

Further, Tourgeman specifically defined Collins to include “anyone else acting on Collins Financial Services, Inc.’s behalf.” Because Paragon Way was acting to collect debts on Collins’s behalf and is Collins’s subsidiary, this document request should have accounted for Paragon Way. And, Collins, as the principal corporation, has control and possession of Paragon Way’s documents. For instance, Collins agreed in its supplemental response to Interrogatory No. 13 and 20 to produce certain documents from Paragon Way. Thus, Collins’s current response is inadequate.

Accordingly, Tourgeman requests that this Court order Collins to provide a supplemental response to Request No. 12 and produce any documents improperly withheld from production.

DEFENDANTS’ REASONS WHY NO FURTHER RESPONSE IS REQUIRED TO DOCUMENT REQUEST NO. 12:

Defendant has already explained that it is not a debt collector and that it has no responsive documents. Tourgeman has also been informed that all collection functions, including management of collection litigation, are handled by non-party Paragon Way, Inc., and he can seek documents from Paragon through a proper subpoena. In an attempt to avoid this dispute, Defendant has produced responsive documents maintained by Paragon Way which relate to the filing of the suit against Tourgeman, and Defendant offered to make its witness, a Paragon Way witness, and a witness from Nelson & Kennard available for depositions. Rather than take the depositions, Tourgeman cancelled them and filed this motion.

In addition, this request for “all” documents relating to the number of debtors that were sued will not lead to the discovery of admissible evidence, and will not identify class members. Tourgeman suggests this request is proper because he seeks

1 to represent a purported FDCPA class of all persons who were “contacted or sued”
 2 by Defendants, and therefore “all” of Defendants’ collection practices are at issue.
 3 He is wrong. The FDCPA does not prohibit collectors from contacting consumers,
 4 nor does it bar collectors from filing suits. Rather, the Act prohibits collectors from
 5 engaging in a specific set of unlawful collection practices. *See* 15 U.S.C. §§ 1692b-
 6 1692j. In fact, the Ninth Circuit has repeatedly recognized the Act was passed to
 7 protect consumers from serious threats, harassment, abuse and other deceptive
 8 practices utilized by unscrupulous collectors. *See* 15 U.S.C. § 1692; *Pressley v.*
 9 *Capital Credit and Collection*, 760 F.2d 922, 925 (9th Cir. 1985) (purpose of Act “is
 10 to protect consumers from a host of unfair, harassing, and deceptive debt collection
 11 practices without imposing unnecessary restrictions on ethical debt collectors”)
 12 (citation omitted). It is not a wholesale ban on any type of contact with a debtor, nor
 13 does it prohibit collectors from filing suit. The focus of the Act is prevention of
 14 deceptive and intimidating conduct by collectors that would “seriously disrupt a
 15 debtor’s life”:

16 The purpose of the FDCPA is to protect vulnerable and unsophisticated
 17 debtors from abuse, harassment and deceptive collection practices. . . .
 18 Congress was concerned with disruptive, threatening, and dishonest tactics.
 19 The Senate Report accompanying the Act cites practices such as ‘threats of
 20 violence, telephone calls at unreasonable hours [and] misrepresentation of
 consumer’s legal rights.’ (Citation). **In other words, Congress seems to have
 contemplated the type of actions that would intimidate unsophisticated
 individuals and which, in the words of the Seventh Circuit, ‘would likely
 disrupt a debtor’s life.’** (Citation).

21 *Guerrero v. RJM Acquisitions LLC*, 499 F.3d 926, 938-39 (9th Cir. 2007) (emphasis
 22 added).

23 Tourgeman cannot seek discovery regarding every debtor “contacted or sued”
 24 by Defendants unless he identifies how the “contacts” or “suits” allegedly violated
 25 the FDCPA. In *Donohue v. Quick Collect, Inc.*, 592 F.3d 1027 (9th Cir. 2010), the
 26 Ninth Circuit held that an allegedly false and misleading statement by a collector
 27 does not violate the FDCPA unless it is “material.” *Id.* At 1033-34. A “material”
 28 misstatement is one that is “genuinely misleading” and that “may frustrate the

1 consumer's ability to intelligently choose his or her response" to the collector's
2 communication. *Id.* at 1034. The Court noted that:

3 In assessing FDCPA liability, **we are not concerned with mere technical**
4 **falsehoods that mislead no one**, but instead with genuinely misleading
5 statements that may frustrate a consumer's ability to intelligently choose his or
6 her response. **Here, the statement in the Complaint did not undermine**
7 **Donohue's ability to intelligently choose her action concerning her debt.**

8 *Id.* at 1034 (emphasis added).

9 Tourgeman claims that Defendants sued him for a debt that was paid "in full"
10 and filed suit in the wrong judicial district. He is entitled to discovery related to
11 those claims. His request for documents relating to the number of debtors that were
12 sued is not relevant to the claims alleged in the case, and will not identify class
13 members. The request should be denied.

14 **DOCUMENT REQUEST NO. 13:**

15 Please produce ALL DOCUMENTS pertaining to the number of alleged
16 debtors that YOU mailed letters to requesting payment of an alleged debt from July
17 31, 2007 to the present.

18 **RESPONSE TO DOCUMENT REQUEST NO. 13:**

19 Collins does not mail letters to debtors. There are no responsive documents.

20 **PLAINTIFF'S REASONS TO COMPEL RESPONSE TO DOCUMENT** 21 **REQUEST NO. 13:**

22 Collins sued Tourgeman in San Diego Superior Court under its own name to
23 collect on an alleged debt. In fact, Collins has filed more than 300 cases under its
24 own name during the class period in the San Diego Superior Court alone. (Weaver
25 Dec. ¶14). Collins is a firm that buys and sells debt obligations. Collins now
26 erroneously contends it "does t mail letters to debtors." Collins or someone acting on
27 its behalf must communicate with debtors. Collins appears to be hiding behind its
28 subsidiary, Paragon Way, even though it files collections lawsuits against alleged
debtors in its own name.

1 But Collins cannot use its subsidiary to shield itself from discovery. Case law
2 directly refutes Collins's position. "The discovery rules require that a corporation
3 furnish such information as is available from the corporation itself or from sources
4 under its control. If the corporation can obtain the information from sources under
5 its control, it may not avoid answering by alleging ignorance." *Goodrich Corp. v.*
6 *Emhart Indus.*, 2005 U.S. Dist. LEXIS 17190, *9 (C.D. Cal. 2005). Here, Paragon
7 Way is a subsidiary directly under Collins's control and thus Collins has no basis for
8 withholding information related to Paragon Way.

9 Further, Tourgeman specifically defined Collins to include "anyone else acting
10 on Collins Financial Services, Inc.'s behalf." Because Paragon Way was acting to
11 collect debts on Collins's behalf and is Collins's subsidiary, this document request
12 should have accounted for Paragon Way. And, Collins, as the principal corporation,
13 has control and possession of Paragon Way's documents. For instance, Collins
14 agreed in its supplemental response to Interrogatory No. 13 and 20 to produce certain
15 documents from Paragon Way. Therefore, Collins's response that no such
16 documents exist is insufficient.

17 Accordingly, Tourgeman requests that this Court order Collins to provide a
18 supplemental response to Request No. 13 and produce any documents improperly
19 withheld from production.

20 **DEFENDANTS' REASONS WHY NO FURTHER RESPONSE IS REQUIRED**
21 **TO DOCUMENT REQUEST NO. 13:**

22 Defendant has already explained that it is not a debt collector, that it does not
23 mail any letters to debtors, and that it has no responsive documents. In addition,
24 there is no basis for compelling a further response to this request because documents
25 relating to demand letters are not relevant to any claim at issue, nor likely to lead to
26 the discovery of admissible evidence. The Court previously dismissed the claim that
27 alleged Defendants had not sent Tourgeman a notice under section 1692g of the
28 FDCPA. *See Order Granting In Part And Denying In Part Defendant's Motion To*

Dismiss And Motion To Strike (Docket 58), at 6. Tourgeman's Second Amended Complaint does not allege that Defendants sent him any collection letters.

There is no basis for seeking discovery on a dismissed claim. Nor is there any basis for compelling documents that do not exist. The motion should be denied as to this request.

DOCUMENT REQUEST NO. 14:

Please produce ALL DOCUMENTS that RELATE TO YOUR investigation of Plaintiff David Tourgeman's alleged debt.

RESPONSE TO DOCUMENT REQUEST NO. 14:

Defendant objects to this Request on the grounds that it is vague and ambiguous as to the term "investigation." Subject to and without waiving the forgoing objection or the General Objections, Defendant will produce non-privileged documents in its possession, custody or control that relate to Plaintiff, his account or any of the defenses asserted in this action.

SUPPLEMENTAL RESPONSE TO DOCUMENT REQUEST NO. 14:

Defendant objects to this Request on the grounds that it is vague and ambiguous as to the term "investigation."

Subject to and without waiving the forgoing objection or the General Objections, Defendant responds as follows: Assuming that Plaintiff seeks information related to the due diligence process with respect to its purchase of the Dell portfolio at issue, no such documents exist.

PLAINTIFF'S REASONS TO COMPEL RESPONSE TO DOCUMENT REQUEST NO. 14:

Collins objects to Request No. 14 on the basis that the term "investigation" is "vague and ambiguous." Collins, however, has failed to exercise reason and common sense to attribute ordinary definitions to terms and phrases utilized in discovery. *Santana Row Hotel Partners,, L.P. v. Zurich Am. Inc. Co.*, 2007 U.S.

1 Dist. LEXIS 31688 (N.D. Cal. 2007). “Investigation” is a common English word
2 that should not preclude Collins from providing a substantive response. Further,
3 Collins has offered no meaningful facts to support the stated objection. Thus, this
4 boilerplate objection cannot be sustained.

5 Collins also attempts to improperly limit the scope of this Request to the due
6 diligence process it conducted when it purchased the Dell portfolio. This request,
7 however, seeks all documents related to Collins’s investigation of Tourgeman’s
8 alleged debt. Thus, Collins’s response is insufficient.

9 Accordingly, Tourgeman requests that this Court order Collins to provide a
10 supplemental response to Request No. 14 without the stated objections, provide a
11 substantive response, and produce any documents improperly withheld from
12 production.

13 **DEFENDANTS’ REASONS WHY NO FURTHER RESPONSE IS REQUIRED**
14 **TO DOCUMENT REQUEST NO. 14:**

15 Defendant has already responded and explained that no responsive documents
16 exist. There is no basis for seeking to compel non-existent documents.

17 In any event, discovery about Defendant’s “investigation” of debts is not
18 proper because the FDCPA does not impose a duty on collectors to independently
19 investigate and verify debts before the initiate the collection process. Even though
20 the law does not impose such a duty, Defendants have no business interest in seeking
21 to collect money from debtors that do not owe it. Defendants do have procedures in
22 place to prevent any attempt to collect debts that have already been paid, and they
23 have provided this information to Tourgeman already. There is no basis for
24 compelling a further response.

25 The FDCPA does not require a debt collector to independently verify the
26 validity of a debt before attempting to collect it. Instead, the FDCPA allows a
27 collector to assume the debt is valid, unless the debtor submits a timely dispute to the
28 collector. *See* 15 U.S.C. § 1692g(a)(3) (collector must notify consumer that debt will

1 be assumed valid unless consumer disputes validity of debt within 30 days of receipt
 2 of notice); *Smith v. Transworld Sys., Inc.*, 953 F.2d 1025, 1032 (6th Cir. 1992)
 3 (FDCPA does not require collector to independently investigate debt referred for
 4 collection); *Hyman v. Tate*, 362 F.3d 965, 968 (7th Cir. 2004) (FDCPA does not
 5 require collector to independently verify validity of debt to qualify for “bona fide
 6 error” defense). Here, non-party Paragon Way, Inc. and Nelson & Kennard both sent
 7 notices to Tourgeman advising him of his right to dispute the debt, but Tourgeman
 8 never responded.³

9 If Tourgeman is arguing that discovery about Defendants’ “investigating” of
 10 debts is relevant to show that Defendants did not have possession of sufficient
 11 evidence to prove their case before the collection suit was filed, his requests are
 12 improper as this Court has already rejected this theory of recovery.⁴

13 Defendants have provided discovery on the procedures used to ensure that
 14 they are filing suit on valid debts and are filing suit in the correct judicial district.
 15 The motion should be denied as to this request.

16 **DOCUMENT REQUEST NO. 15:**

17 Please produce ALL DOCUMENTS RELATING TO YOUR organization of
 18 COLLINS’ employees, including any subsidiaries or affiliates.

19 **RESPONSE TO DOCUMENT REQUEST NO. 15:**

20 Defendant objects to this Request on the grounds that it seeks information
 21

22 ³ See Declaration of Howard Knauer In Support Of Motion For Summary
 23 Judgment (Docket 75), ¶ 5, Ex. B; Declaration of Jonathan E. Ayers In Support Of
 24 Motion For Summary Judgment (Docket 73), ¶ 4, Ex. B.

25 ⁴ See Order Granting In Part And Denying In Part Defendant’s Motion To Dismiss
 26 And Motion To Strike (Docket 58), at 7 (“[T]he filing of a lawsuit, even if a plaintiff
 27 does not have the means of proving the case at filing or does not ultimately prevail, has
 28 not by itself been considered harassment or abuse under the FDCPA. See, e.g., *Heintz*
v. Jenkins, 514 U.S. 291, 296 (1995); *Harvey v. Great Seneca Financial Corp.*, 453 F.3d
 324, 330 (6th Cir. 2006).

1 which is not relevant to the subject matter of this lawsuit, nor reasonably calculated
 2 to lead to the discovery of admissible evidence. Subject to and without waiving the
 3 forgoing objection or the General Objections, Collins will produce organizational
 4 charts, if any exist, responsive to this Request.

5 **PLAINTIFF’S REASONS TO COMPEL RESPONSE TO DOCUMENT**

6 **REQUEST NO. 15:**

7 Federal Rule of Civil Procedure 34(b)(2)(C) requires that “[a]n objection to
 8 part of a request must specify the part and permit inspection of the rest.”; *see also E.*
 9 *& J. Gallo Winery v. Cantine Rallo, S.p.A.*, 2006 U.S. Dist. LEXIS 42069, *3-4(E.D.
 10 Cal. 2006)(“If objection is made to part of an item or category, the part shall be
 11 specified and inspection permitted of the remaining parts. The party submitting the
 12 request may move for an order under Rule 37(a) with respect to any objection to or
 13 other failure to respond to the request or any part thereof, or any failure to permit
 14 inspection as requested.”). In *E. & J. Gallo Winery*, the court ordered the defendant
 15 to provide supplemental responses because the defendant’s original responses
 16 contained imprecise, boilerplate objections:

17 Defendant’s responses do not allow for meaningful evaluation. Plaintiff
 18 and the Court are unable to determine, with certainty, the requests for
 19 which Defendant is producing documents, the requests for which
 20 Defendant is withholding documents and on what basis, and the requests
 21 for which it has no responsive documents. Defendant cites boilerplate
 22 general objections, and does not explain why the objection applies to the
 23 response or whether documents were withheld pursuant to the stated
 24 objections.

25 Collins objects to Request No. 15 on the basis that it is “overbroad, unduly
 26 burdensome and oppressive” and “not relevant to the subject matter of this lawsuit,
 27 nor reasonably calculated to lead to the discovery of admissible evidence.” But
 28 Collins fails to provide any explanation for these objections. *Keith H. v. Long Beach*
Unified Sch. Dist., 228 F.R.D.652, 655-56 (C.D. Cal. 2005) (“The party who resists
 discovery has the burden to show discovery should not be allowed, and has the
 burden of clarifying, explaining, and supporting its objections.”). Moreover, because

1 Collins's response is so broad and unspecific, it is impossible to tell whether
2 documents are being withheld on the basis of the stated objections, and/or whether
3 responsive documents even exist. Collins's objection is especially offensive and
4 frivolous given its repeated attempts to hide behind its affiliate Paragon Way as
5 justification for not responding to Tourgeman's discovery requests.

6 Accordingly, Tourgeman requests that this Court order Collins to provide a
7 supplemental response to Request No. 15 without the stated objections, provide a
8 substantive response, and produce any documents improperly withheld from
9 production.

10 **DEFENDANTS' REASONS WHY NO FURTHER RESPONSE IS REQUIRED**
11 **TO DOCUMENT REQUEST NO. 15:**

12 Defendant has already agreed to produce organizational charts responsive to
13 this request, to the extent any exist. There is no reason to file a motion to compel
14 production of documents that are either non-existent or that have already been
15 produced. The request should be denied.

16
17 **DOCUMENT REQUEST NO. 16:**

18 Please produce ALL copies of each complaint in any litigation filed against
19 COLLINS, if any, alleging violations of the Fair Debt Collection Practices Act and
20 the Rosenthal Act.

21 **RESPONSE TO DOCUMENT REQUEST NO. 16:**

22 Defendant objects to this Request on the grounds that it is overbroad, unduly
23 burdensome and oppressive, and seeks information which is not relevant to the
24 subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of
25 admissible evidence. Complaints filed by other debtors containing unsubstantiated
26 allegations regarding other sets of facts has no bearing on the claims or defenses in
27 this action. Defendant also objects to this Request on the grounds that the documents
28 requested, if any exist, are a matter of public record, equally available to Plaintiff.

PLAINTIFF'S REASONS TO COMPEL RESPONSE TO DOCUMENT**REQUEST NO. 16:**

Federal Rule of Civil Procedure 34(b)(2)(C) requires that “[a]n objection to part of a request must specify the part and permit inspection of the rest.”; *see also E. & J. Gallo Winery v. Cantine Rallo, S.p.A.*, 2006 U.S. Dist. LEXIS 42069, *3-4(E.D. Cal. 2006)(“If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.”). In *E. & J. Gallo Winery*, the court ordered the defendant to provide supplemental responses because the defendant’s original responses contained imprecise, boilerplate objections:

Defendant’s responses do not allow for meaningful evaluation. Plaintiff and the Court are unable to determine, with certainty, the requests for which Defendant is producing documents, the requests for which Defendant is withholding documents and on what basis, and the requests for which it has no responsive documents. Defendant cites boilerplate general objections, and does not explain why the objection applies to the response or whether documents were withheld pursuant to the stated objections.

Collins objects to Request No. 16 on the basis that it is “overbroad, unduly burdensome and oppressive” and “not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of admissible evidence.” But Collins fails to provide any explanation for these objections. *Keith H. v. Long Beach Unified Sch. Dist.*, 228 F.R.D.652, 655-56 (C.D. Cal. 2005) (“The party who resists discovery has the burden to show discovery should not be allowed, and has the burden of clarifying, explaining, and supporting its objections.”). Moreover, because Collins’s response is so broad and unspecific, it is impossible to tell whether documents are being withheld on the basis of the stated objections, and/or whether responsive documents even exist.

Collins also objects that “complaints filed by other debtors containing unsubstantiated allegations regarding other sets of facts has no bearing on the claims

1 or defenses in this action.” Collins is wrong. Indeed, the Complaint includes class
2 allegations and a class comprised of:

3 All consumers residing in the United States and abroad who, during the
4 period within one year of the date of the filing of the complaint, were
5 contacted or sued in the United States by either Collins Financial or
6 Nelson & Kennard in an effort to collect an alleged debt.

7 Further, the Complaint alleges that Collins “is a debt collector” that “routinely
8 attempts to collect consumer debts without spending the requisite time to verify the
9 debts and ensure the accuracy of information pertaining to the alleged debts.” ¶33.
10 The Complaint also alleges that Collins is not “meaningfully engaged” in the
11 collection of debts. ¶30. Complaints filed by other debtors against Collins
12 evidences Collins’s debt collection practices. Thus, this Request is relevant and
13 reasonably calculated to lead to the discovery of admissible evidence.

14 Accordingly, Tourgeman requests that this Court order Collins to provide a
15 supplemental response to Request No. 16 without the stated objections, provide a
16 substantive response, and produce any documents improperly withheld from
17 production.

18 **DEFENDANTS’ REASONS WHY NO FURTHER RESPONSE IS REQUIRED**
19 **TO DOCUMENT REQUEST NO. 16:**

20 The motion to compel should be denied as to this request because Plaintiff has
21 never made any attempt to meet and confer regarding the request before filing the
22 motion. No party may move for an order compelling further discovery until after the
23 party has made a good faith attempt to meet and confer to resolve the dispute without
24 court intervention. The Federal Rules Of Civil Procedure and Local Rules of this
25 Court are crystal clear on this point. *See* Fed. R. Civ. P. 37(a)(1) (“The motion must
26 include a certification that the movant has in good faith conferred or attempted to
27 confer with the person or party failing to make disclosure or discovery in an effort to
28 obtain it without court action.”); Local Rule 26.1a (“The court will entertain no
motion pursuant to Rules 26 through 37, Fed. R. Civ. P., unless counsel will have
previously met and conferred on **all disputed issues.**”).

1 Despite these clear requirements, this is one of eighteen separate discovery
 2 requests that were never discussed in any letter or any phone call by counsel for
 3 Tourgeman for this motion was filed. *See* Declaration of Tomio B. Narita In Support
 4 Of Opposition To Motion To Compel And Motion For Protective Order And Award
 5 Of Sanctions (“Narita Decl.”), ¶¶ 3-6, Exs. A and B. Defendants specifically
 6 informed counsel for Tourgeman that the motion was improper because no meet and
 7 confer had been conducted, but Tourgeman’s counsel refused to take the motion off
 8 calendar, and refused to withdraw the motion as to the eighteen requests. *Id.*

9 Since no meet and confer was conducted as to “all disputed issues” as required
 10 by Rule 26.1a of the Local Rules, the entire motion should be denied. At a bare
 11 minimum, the Court should deny the motion as to all of the eighteen discovery
 12 requests, including this one, that were never discussed by counsel. *See Presidio*
 13 *Components, Inc. v. American Technical Ceramics Corp.*, 2009 WL 1423577, *3-4
 14 (S.D. Cal. May 20, 2009) (denying motion to compel where no proper meet and
 15 confer conducted in advance of motion). Counsel for Tourgeman should also be
 16 sanctioned for their deliberate refusal to comply with the requirements of the Federal
 17 Rules and the Local Rules.

18
 19 **DOCUMENT REQUEST NO. 19:**

20 Please produce ALL DOCUMENTS relating to the maintenance or change of
 21 procedures by COLLINS adopted to avoid any violation of the Fair Debt Collection
 22 Practices Act and the Rosenthal Act.

23 **RESPONSE TO DOCUMENT REQUEST NO. 19:**

24 Subject to and without waiving the General Objections, Collins does not seek
 25 to collect debts from consumers. It has no documents that are responsive to this
 26 Request.

PLAINTIFF'S REASONS TO COMPEL RESPONSE TO DOCUMENT**REQUEST NO. 19:**

Collins sued Tourgeman in San Diego Superior Court under its own name to collect on an alleged debt. In fact, Collins has filed more than 300 cases under its own name during the class period in the San Diego Superior Court alone. (Weaver Dec. ¶14). Based on this information, Tourgeman propounded document requests and special interrogatories on Collins. Collins erroneously contends that it does not collect debts from consumers. Collins appears to be hiding behind its subsidiary, Paragon Way, even though it files collections lawsuits against alleged debtors in its own name.

But Collins cannot use its subsidiary to shield itself from discovery. Case law directly refutes Collins's position. "The discovery rules require that a corporation furnish such information as is available from the corporation itself or from sources under its control. If the corporation can obtain the information from sources under its control, it may not avoid answering by alleging ignorance." *Goodrich Corp. v. Emhart Indus.*, 2005 U.S. Dist. LEXIS 17190, *9 (C.D. Cal. 2005). Here, Paragon Way is a subsidiary directly under Collins's control and thus Collins has no basis for withholding information related to Paragon Way.

Further, Tourgeman specifically defined Collins to include "anyone else acting on Collins Financial Services, Inc.'s behalf." Because Paragon Way was acting to collect debts on Collins's behalf and is Collins's subsidiary, this document request should have accounted for Paragon Way. And, Collins, as the principal corporation, has control and possession of Paragon Way's documents. For instance, Collins agreed in its supplemental response to Interrogatory No. 13 and 20 to produce certain documents from Paragon Way. Therefore, Collins's response that no such documents exist is insufficient.

Accordingly, Tourgeman requests that this Court order Collins to provide a supplemental response to Request No. 19 and produce any documents improperly

1 withheld from production.

2 **DEFENDANTS' REASONS WHY NO FURTHER RESPONSE IS REQUIRED**
 3 **TO DOCUMENT REQUEST NO. 19:**

4 The motion to compel should be denied as to this request because Plaintiff has
 5 never made any attempt to meet and confer regarding the request before filing the
 6 motion. No party may move for an order compelling further discovery until after the
 7 party has made a good faith attempt to meet and confer to resolve the dispute without
 8 court intervention. The Federal Rules Of Civil Procedure and Local Rules of this
 9 Court are crystal clear on this point. *See* Fed. R. Civ. P. 37(a)(1) (“The motion must
 10 include a certification that the movant has in good faith conferred or attempted to
 11 confer with the person or party failing to make disclosure or discovery in an effort to
 12 obtain it without court action.”); Local Rule 26.1a (“The court will entertain no
 13 motion pursuant to Rules 26 through 37, Fed. R. Civ. P., unless counsel will have
 14 previously met and conferred on **all disputed issues.**”).

15 Despite these clear requirements, this is one of eighteen separate discovery
 16 requests that were never discussed in any letter or any phone call by counsel for
 17 Tourgeman for this motion was filed. *See* Declaration of Tomio B. Narita In Support
 18 Of Opposition To Motion To Compel And Motion For Protective Order And Award
 19 Of Sanctions (“Narita Decl.”), ¶¶ 3-6, Exs. A and B. Defendants specifically
 20 informed counsel for Tourgeman that the motion was improper because no meet and
 21 confer had been conducted, but Tourgeman’s counsel refused to take the motion off
 22 calendar, and refused to withdraw the motion as to the eighteen requests. *Id.*

23 Since no meet and confer was conducted as to “all disputed issues” as required
 24 by Rule 26.1a of the Local Rules, the entire motion should be denied. At a bare
 25 minimum, the Court should deny the motion as to all of the eighteen discovery
 26 requests, including this one, that were never discussed by counsel. *See Presidio*
 27 *Components, Inc. v. American Technical Ceramics Corp.*, 2009 WL 1423577, *3-4
 28 (S.D. Cal. May 20, 2009) (denying motion to compel where no proper meet and

1 confer conducted in advance of motion). Counsel for Tourgeman should also be
2 sanctioned for their deliberate refusal to comply with the requirements of the Federal
3 Rules and the Local Rules.

4
5 **DOCUMENT REQUEST NO. 20:**

6 Please produce ALL DOCUMENTS RELATING TO insurance policies
7 covering COLLINS for civil law violations including breach of contract, California's
8 Unfair Competition Laws, the Federal [sic] Debt Collection Practices Act and the
9 Rosenthal Act.

10 **RESPONSE TO DOCUMENT REQUEST NO. 20:**

11 Collins has not tendered the defense of this action to any insurance carrier and
12 thus has no responsive documents.

13 **PLAINTIFF'S REASONS TO COMPEL RESPONSE TO DOCUMENT**
14 **REQUEST NO. 20:**

15 Collins refuses to produce documents to Request No. 20, contending it "has
16 not tendered the defense of this action to any insurance carrier so there are no
17 relevant responsive documents." But it is immaterial whether Collins has tendered
18 the defense of this action to any insurance carrier. The crux of the Complaint is that
19 Collins violated the Fair Debt Collection Practices Act and engages in unfair debt
20 collection practices. Documents that establish culpability or relate to
21 indemnification for those violations are relevant. If Collins maintains an insurance
22 policy that covers these violations, this is enough to render the documents relevant.

23 Accordingly, Tourgeman requests that this Court order Collins to provide a
24 supplemental response to Request No. 20 and produce any documents improperly
25 withheld from production.

26 **DEFENDANTS' REASONS WHY NO FURTHER RESPONSE IS REQUIRED**
27 **TO DOCUMENT REQUEST NO. 20:**

28 Collins has not tendered the defense of this action to any insurance carrier.

1 There is no insurance policy that could have any bearing on this case. There is no
2 basis for compelling the firm to produce insurance policies that have bearing on this
3 dispute or its resolution.

4
5 **DOCUMENT REQUEST NO. 21:**

6 Please produce ALL DOCUMENTS that RELATE TO an investigation of
7 COLLINS by an AGENCY for violations of California Unfair Competition Laws, the
8 Federal [sic] Debt Collection Practices Act and the Rosenthal Act.

9 **RESPONSE TO DOCUMENT REQUEST NO. 21:**

10 Defendant objects to this Request on the grounds that it is vague and
11 ambiguous as to the term “an investigation.” Defendant also objects to this Request
12 on the grounds that it seeks information which is not relevant to the subject matter of
13 this lawsuit, nor reasonably calculated to lead to the discovery of admissible
14 evidence.

15 **SUPPLEMENTAL RESPONSE TO DOCUMENT REQUEST NO. 21:**

16 Defendant objects to this Request on the grounds that it is vague and
17 ambiguous as to the term “an investigation.” Defendant also objects to this Request
18 on the grounds that it seeks information which is not relevant to the subject matter of
19 this lawsuit, nor reasonably calculated to lead to the discovery of admissible
20 evidence.

21 Subject to and without waiving the forgoing objection or the General
22 Objections, Defendant responds as follows: Defendant has never been investigated
23 by any agency for any alleged violation of the California Unfair Competition Law,
24 the FDCPA or the Rosenthal Act. No responsive documents exist.

25 **PLAINTIFF’S REASONS TO COMPEL RESPONSE TO DOCUMENT**
26 **REQUEST NO. 21:**

27 Federal Rule of Civil Procedure 34(b)(2)(C) requires that “[a]n objection to
28 part of a request must specify the part and permit inspection of the rest.”; *see also E.*

1 & *J. Gallo Winery v. Cantine Rallo, S.p.A.*, 2006 U.S. Dist. LEXIS 42069, *3-4(E.D.
 2 Cal. 2006)(“If objection is made to part of an item or category, the part shall be
 3 specified and inspection permitted of the remaining parts. The party submitting the
 4 request may move for an order under Rule 37(a) with respect to any objection to or
 5 other failure to respond to the request or any part thereof, or any failure to permit
 6 inspection as requested.”). In *E. & J. Gallo Winery*, the court ordered the defendant
 7 to provide supplemental responses because the defendant’s original responses
 8 contained imprecise, boilerplate objections:

9 Defendant’s responses do not allow for meaningful evaluation. Plaintiff
 10 and the Court are unable to determine, with certainty, the requests for
 11 which Defendant is producing documents, the requests for which
 12 Defendant is withholding documents and on what basis, and the requests
 13 for which it has no responsive documents. Defendant cites boilerplate
 general objections, and does not explain why the objection applies to the
 response or whether documents were withheld pursuant to the stated
 objections.

14 Collins objects to Request No. 21 on the basis that it is “not relevant to the
 15 subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of
 16 admissible evidence.” But Collins fails to provide any explanation for these
 17 objections. *Keith H. v. Long Beach Unified Sch. Dist.*, 228 F.R.D.652, 655-56 (C.D.
 18 Cal. 2005) (“The party who resists discovery has the burden to show discovery
 19 should not be allowed, and has the burden of clarifying, explaining, and supporting
 20 its objections.”). Moreover, because Collins’s response is so broad and unspecific, it
 21 is impossible to tell whether documents are being withheld on the basis of the stated
 22 objections, and/or whether responsive documents even exist.

23 Collins also objects to Request No. 21 on the basis that the term “an
 24 investigation” is “vague and ambiguous.” Collins, however, has failed to exercise
 25 reason and common sense to attribute ordinary definitions to terms and phrases
 26 utilized in discovery. *Santana Row Hotel Partners,, L.P. v. Zurich Am. Inc. Co.*,
 27 2007 U.S. Dist. LEXIS 31688 (N.D. Cal. 2007). “Investigation” is a common
 28 English word that should not preclude Collins from providing a substantive response.

1 Further, Collins has offered no meaningful facts to support the stated objection.
2 Thus, this boilerplate objection cannot be sustained.

3 Accordingly, Tourgeman requests that this Court order Collins to provide a
4 supplemental response to Request No. 21 without the stated objections, provide a
5 substantive response, and produce any documents improperly withheld from
6 production.

7 **DEFENDANTS' REASONS WHY NO FURTHER RESPONSE IS REQUIRED**
8 **TO DOCUMENT REQUEST NO. 21:**

9 Defendant has already responded that it has no responsive documents. There
10 is no basis for seeking an order compelling production of documents that do not
11 exist. The motion must be denied.

12
13 **DOCUMENT REQUEST NO. 22:**

14 Please produce ALL DOCUMENTS that RELATE TO the retention
15 agreements, including the retention agreements themselves (or other operative
16 document describing the respective duties and obligations of client and attorney), if
17 any, between COLLINS and NELSON.

18 **RESPONSE TO DOCUMENT REQUEST NO. 22:**

19 No responsive documents exist.

20 **PLAINTIFF'S REASONS TO COMPEL RESPONSE TO DOCUMENT**
21 **REQUEST NO. 22:**

22 Collins sued Tourgeman in San Diego Superior Court under its own name to
23 collect on an alleged debt. In fact, Collins has filed more than 300 cases under its
24 own name during the class period in the San Diego Superior Court alone. (Weaver
25 Dec. ¶14). Collins retained Nelson to bring suit against Tourgeman for an alleged
26 debt. Collins must have a retention agreement with Nelson for legal services
27 rendered. Collins erroneously contends that no responsive documents exist. Collins
28

1 appears to be hiding behind its subsidiary, Paragon Way, even though Collins files
2 collection lawsuits against alleged debtors in its own name.

3 But Collins cannot use its subsidiary to shield itself from discovery. Case law
4 directly refutes Collins's position. "The discovery rules require that a corporation
5 furnish such information as is available from the corporation itself or from sources
6 under its control. If the corporation can obtain the information from sources under
7 its control, it may not avoid answering by alleging ignorance." *Goodrich Corp. v.*
8 *Emhart Indus.*, 2005 U.S. Dist. LEXIS 17190, *9 (C.D. Cal. 2005). Here, Paragon
9 Way is a subsidiary directly under Collins's control and thus Collins has no basis for
10 withholding information related to Paragon Way.

11 Further, Tourgeman specifically defined Collins to include "anyone else acting
12 on Collins Financial Services, Inc.'s behalf." Because Paragon Way was acting to
13 collect debts on Collins's behalf and is Collins's subsidiary, this document request
14 should have accounted for Paragon Way. And, Collins, as the principal corporation,
15 has control and possession of Paragon Way's documents. For instance, Collins
16 agreed in its supplemental response to Interrogatory No. 13 and 20 to produce certain
17 documents from Paragon Way. Therefore, Collins's response that no such
18 documents exist is insufficient.

19 Accordingly, Tourgeman requests that this Court order Collins to provide a
20 supplemental response to Request No. 22 and produce any documents improperly
21 withheld from production.

22 **DEFENDANTS' REASONS WHY NO FURTHER RESPONSE IS REQUIRED**
23 **TO DOCUMENT REQUEST NO. 22:**

24 The motion to compel should be denied as to this request because Plaintiff has
25 never made any attempt to meet and confer regarding the request before filing the
26 motion. No party may move for an order compelling further discovery until after the
27 party has made a good faith attempt to meet and confer to resolve the dispute without
28 court intervention. The Federal Rules Of Civil Procedure and Local Rules of this

1 Court are crystal clear on this point. *See* Fed. R. Civ. P. 37(a)(1) (“The motion must
2 include a certification that the movant has in good faith conferred or attempted to
3 confer with the person or party failing to make disclosure or discovery in an effort to
4 obtain it without court action.”); Local Rule 26.1a (“The court will entertain no
5 motion pursuant to Rules 26 through 37, Fed. R. Civ. P., unless counsel will have
6 previously met and conferred on **all disputed issues**.”).

7 Despite these clear requirements, this is one of eighteen separate discovery
8 requests that were never discussed in any letter or any phone call by counsel for
9 Tourgeman for this motion was filed. *See* Declaration of Tomio B. Narita In Support
10 Of Opposition To Motion To Compel And Motion For Protective Order And Award
11 Of Sanctions (“Narita Decl.”), ¶¶ 3-6, Exs. A and B. Defendants specifically
12 informed counsel for Tourgeman that the motion was improper because no meet and
13 confer had been conducted, but Tourgeman’s counsel refused to take the motion off
14 calendar, and refused to withdraw the motion as to the eighteen requests. *Id.*

15 Since no meet and confer was conducted as to “all disputed issues” as required
16 by Rule 26.1a of the Local Rules, the entire motion should be denied. At a bare
17 minimum, the Court should deny the motion as to all of the eighteen discovery
18 requests, including this one, that were never discussed by counsel. *See Presidio*
19 *Components, Inc. v. American Technical Ceramics Corp.*, 2009 WL 1423577, *3-4
20 (S.D. Cal. May 20, 2009) (denying motion to compel where no proper meet and
21 confer conducted in advance of motion). Counsel for Tourgeman should also be
22 sanctioned for their deliberate refusal to comply with the requirements of the Federal
23 Rules and the Local Rules.

24
25 **DOCUMENT REQUEST NO. 23:**

26 Please produce ALL DOCUMENTS that RELATE TO COLLINS’ phone
27 calls, including but not limited to phone records and call logs, placed to David
28

1 Tourgeman, Cesar Tourgeman, Rebecca Tourgeman or anyone else for the purposes
2 of collecting David Tourgeman's alleged debt.

3 **RESPONSE TO DOCUMENT REQUEST NO. 23:**

4 No responsive documents exist.

5 **PLAINTIFF'S REASONS TO COMPEL RESPONSE TO DOCUMENT**
6 **REQUEST NO. 23:**

7 Collins sued Tourgeman in San Diego Superior Court under its own name to
8 collect on an alleged debt. In fact, Collins has filed more than 300 cases under its
9 own name during the class period in the San Diego Superior Court alone. (Weaver
10 Dec. ¶14). Collins retained Nelson to bring suit against Tourgeman for an alleged
11 debt. Collins, or someone acting on its behalf, must have placed a call to David
12 Tourgeman, Cesar Tourgeman, Rebecca Tourgeman or anyone else for the purpose
13 of collecting David Tourgeman's alleged debt. Collins erroneously contends that no
14 such documents exist. Collins appears to be hiding behind its subsidiary, Paragon
15 Way, even though Collins files collection lawsuits against alleged debtors in its own
16 name.

17 But Collins cannot use its subsidiary to shield itself from discovery. Case law
18 directly refutes Collins's position. "The discovery rules require that a corporation
19 furnish such information as is available from the corporation itself or from sources
20 under its control. If the corporation can obtain the information from sources under
21 its control, it may not avoid answering by alleging ignorance." *Goodrich Corp. v.*
22 *Emhart Indus.*, 2005 U.S. Dist. LEXIS 17190, *9 (C.D. Cal. 2005). Here, Paragon
23 Way is a subsidiary directly under Collins's control and thus Collins has no basis for
24 withholding information related to Paragon Way.

25 Further, Tourgeman specifically defined Collins to include "anyone else acting
26 on Collins Financial Services, Inc.'s behalf." Because Paragon Way was acting to
27 collect debts on Collins's behalf and is Collins's subsidiary, this document request
28 should have accounted for Paragon Way. And, Collins, as the principal corporation,

1 has control and possession of Paragon Way's documents. For instance, Collins
 2 agreed in its supplemental response to Interrogatory No. 13 and 20 to produce certain
 3 documents from Paragon Way. Therefore, Collins's response that no such
 4 documents exist is insufficient.

5 Accordingly, Tourgeman requests that this Court order Collins to provide a
 6 supplemental response to Request No. 23 and produce any documents improperly
 7 withheld from production.

8 **DEFENDANTS' REASONS WHY NO FURTHER RESPONSE IS REQUIRED**
 9 **TO DOCUMENT REQUEST NO. 23:**

10 The motion to compel should be denied as to this request because Plaintiff has
 11 never made any attempt to meet and confer regarding the request before filing the
 12 motion. No party may move for an order compelling further discovery until after the
 13 party has made a good faith attempt to meet and confer to resolve the dispute without
 14 court intervention. The Federal Rules Of Civil Procedure and Local Rules of this
 15 Court are crystal clear on this point. *See* Fed. R. Civ. P. 37(a)(1) ("The motion must
 16 include a certification that the movant has in good faith conferred or attempted to
 17 confer with the person or party failing to make disclosure or discovery in an effort to
 18 obtain it without court action."); Local Rule 26.1a ("The court will entertain no
 19 motion pursuant to Rules 26 through 37, Fed. R. Civ. P., unless counsel will have
 20 previously met and conferred on **all disputed issues.**").

21 Despite these clear requirements, this is one of eighteen separate discovery
 22 requests that were never discussed in any letter or any phone call by counsel for
 23 Tourgeman for this motion was filed. *See* Declaration of Tomio B. Narita In Support
 24 Of Opposition To Motion To Compel And Motion For Protective Order And Award
 25 Of Sanctions ("Narita Decl."), ¶¶ 3-6, Exs. A and B. Defendants specifically
 26 informed counsel for Tourgeman that the motion was improper because no meet and
 27 confer had been conducted, but Tourgeman's counsel refused to take the motion off
 28 calendar, and refused to withdraw the motion as to the eighteen requests. *Id.*

1 Since no meet and confer was conducted as to “all disputed issues” as required
 2 by Rule 26.1a of the Local Rules, the entire motion should be denied. At a bare
 3 minimum, the Court should deny the motion as to all of the eighteen discovery
 4 requests, including this one, that were never discussed by counsel. *See Presidio*
 5 *Components, Inc. v. American Technical Ceramics Corp.*, 2009 WL 1423577, *3-4
 6 (S.D. Cal. May 20, 2009) (denying motion to compel where no proper meet and
 7 confer conducted in advance of motion). Counsel for Tourgeman should also be
 8 sanctioned for their deliberate refusal to comply with the requirements of the Federal
 9 Rules and the Local Rules.

10
 11 **DOCUMENT REQUEST NO. 24:**

12 Please produce ALL DOCUMENTS that RELATE TO COLLINS’ policies
 13 and procedures for settling alleged debts with debtors.

14 **RESPONSE TO DOCUMENT REQUEST NO. 24:**

15 No responsive documents exist.

16 **PLAINTIFF’S REASONS TO COMPEL RESPONSE TO DOCUMENT**
 17 **REQUEST NO. 24:**

18 Collins sued Tourgeman in San Diego Superior Court under its own name to
 19 collect on an alleged debt. In fact, Collins has filed more than 300 cases under its
 20 own name during the class period in the San Diego Superior Court alone. (Weaver
 21 Dec. ¶14). Collins retained Nelson to bring suit against Tourgeman for an alleged
 22 debt. Collins should have policies or procedures in place for settling debts with
 23 debtors. Collins erroneously contends that no responsive documents exist. Collins
 24 appears to be hiding behind its subsidiary, Paragon Way, even though Collins files
 25 collection lawsuits against alleged debtors in its own name.

26 But Collins cannot use its subsidiary to shield itself from discovery. Case law
 27 directly refutes Collins’s position. “The discovery rules require that a corporation
 28 furnish such information as is available from the corporation itself or from sources

1 under its control. If the corporation can obtain the information from sources under
2 its control, it may not avoid answering by alleging ignorance.” *Goodrich Corp. v.*
3 *Emhart Indus.*, 2005 U.S. Dist. LEXIS 17190, *9 (C.D. Cal. 2005). Here, Paragon
4 Way is a subsidiary directly under Collins’s control and thus Collins has no basis for
5 withholding information related to Paragon Way.

6 Further, Tourgeman specifically defined Collins to include “anyone else acting
7 on Collins Financial Services, Inc.’s behalf.” Because Paragon Way was acting to
8 collect debts on Collins’s behalf and is Collins’s subsidiary, this document request
9 should have accounted for Paragon Way. And, Collins, as the principal corporation,
10 has control and possession of Paragon Way’s documents. For instance, Collins
11 agreed in its supplemental response to Interrogatory No. 13 and 20 to produce certain
12 documents from Paragon Way. Therefore, Collins’s response that no such
13 documents exist is insufficient.

14 Accordingly, Tourgeman requests that this Court order Collins to provide a
15 supplemental response to Request No. 24 and produce any documents improperly
16 withheld from production.

17 **DEFENDANTS’ REASONS WHY NO FURTHER RESPONSE IS REQUIRED**
18 **TO DOCUMENT REQUEST NO. 24:**

19 The motion to compel should be denied as to this request because Plaintiff has
20 never made any attempt to meet and confer regarding the request before filing the
21 motion. No party may move for an order compelling further discovery until after the
22 party has made a good faith attempt to meet and confer to resolve the dispute without
23 court intervention. The Federal Rules Of Civil Procedure and Local Rules of this
24 Court are crystal clear on this point. *See* Fed. R. Civ. P. 37(a)(1) (“The motion must
25 include a certification that the movant has in good faith conferred or attempted to
26 confer with the person or party failing to make disclosure or discovery in an effort to
27 obtain it without court action.”); Local Rule 26.1a (“The court will entertain no
28

1 motion pursuant to Rules 26 through 37, Fed. R. Civ. P., unless counsel will have
2 previously met and conferred on **all disputed issues.**”).

3 Despite these clear requirements, this is one of eighteen separate discovery
4 requests that were never discussed in any letter or any phone call by counsel for
5 Tourgeman for this motion was filed. *See* Declaration of Tomio B. Narita In Support
6 Of Opposition To Motion To Compel And Motion For Protective Order And Award
7 Of Sanctions (“Narita Decl.”), ¶¶ 3-6, Exs. A and B. Defendants specifically
8 informed counsel for Tourgeman that the motion was improper because no meet and
9 confer had been conducted, but Tourgeman’s counsel refused to take the motion off
10 calendar, and refused to withdraw the motion as to the eighteen requests. *Id.*

11 Since no meet and confer was conducted as to “all disputed issues” as required
12 by Rule 26.1a of the Local Rules, the entire motion should be denied. At a bare
13 minimum, the Court should deny the motion as to all of the eighteen discovery
14 requests, including this one, that were never discussed by counsel. *See Presidio*
15 *Components, Inc. v. American Technical Ceramics Corp.*, 2009 WL 1423577, *3-4
16 (S.D. Cal. May 20, 2009) (denying motion to compel where no proper meet and
17 confer conducted in advance of motion). Counsel for Tourgeman should also be
18 sanctioned for their deliberate refusal to comply with the requirements of the Federal
19 Rules and the Local Rules.

20
21 **DOCUMENT REQUEST NO. 25:**

22 Please produce ALL DOCUMENTS that RELATE TO COLLINS’ revenue for
23 each calendar year from 2005 to the present, including but not limited to financial
24 summaries, period reports, tax returns and financial statements.

25 **RESPONSE TO DOCUMENT REQUEST NO. 25:**

26 Defendant objects to this Request on the grounds that it is overbroad, unduly
27 burdensome and oppressive, and to the extent that it seeks information which is not
28 relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the

1 discovery of admissible evidence. Defendant further objects to this Request to the
2 extent that it seeks confidential financial information.

3 **PLAINTIFF’S REASONS TO COMPEL RESPONSE TO DOCUMENT**

4 **REQUEST NO. 25:**

5 Federal Rule of Civil Procedure 34(b)(2)(C) requires that “[a]n objection to
6 part of a request must specify the part and permit inspection of the rest.”; *see also E.*
7 *& J. Gallo Winery v. Cantine Rallo, S.p.A.*, 2006 U.S. Dist. LEXIS 42069, *3-4(E.D.
8 Cal. 2006)(“If objection is made to part of an item or category, the part shall be
9 specified and inspection permitted of the remaining parts. The party submitting the
10 request may move for an order under Rule 37(a) with respect to any objection to or
11 other failure to respond to the request or any part thereof, or any failure to permit
12 inspection as requested.”). In *E. & J. Gallo Winery*, the court ordered the defendant
13 to provide supplemental responses because the defendant’s original responses
14 contained imprecise, boilerplate objections:

15 Defendant’s responses do not allow for meaningful evaluation. Plaintiff
16 and the Court are unable to determine, with certainty, the requests for
17 which Defendant is producing documents, the requests for which
18 Defendant is withholding documents and on what basis, and the requests
19 for which it has no responsive documents. Defendant cites boilerplate
20 general objections, and does not explain why the objection applies to the
21 response or whether documents were withheld pursuant to the stated
22 objections.

23 Collins objects to Request No. 25 on the basis that it is “overbroad, unduly
24 burdensome and oppressive” and “not relevant to the subject matter of this lawsuit,
25 nor reasonably calculated to lead to the discovery of admissible evidence.” But
26 Collins fails to provide any explanation for these objections. *Keith H. v. Long Beach*
27 *Unified Sch. Dist.*, 228 F.R.D.652, 655-56 (C.D. Cal. 2005) (“The party who resists
28 discovery has the burden to show discovery should not be allowed, and has the
burden of clarifying, explaining, and supporting its objections.”). Moreover, because
Collins’s response is so broad and unspecific, it is impossible to tell whether
documents are being withheld on the basis of the stated objections, and/or whether

1 responsive documents even exist. And, Collins has not agreed to provide any
2 responsive documents.

3 Documents related to Collins's revenues establish how debt collection
4 activities were pursued and how Collins was incentivized to pursue certain alleged
5 debtors. Further, these documents are relevant for the purpose of establishing
6 damages. To the extent Collins contends this request seeks confidential information,
7 Tourgeman has offered to sign a protective order. Collins ignored this offer.
8 (Weaver Dec. ¶19).

9 Accordingly, Tourgeman requests that this Court order Collins to provide a
10 supplemental response to Request No. 25 without the stated objections, provide a
11 substantive response, and produce any documents improperly withheld from
12 production.

13 **DEFENDANTS' REASONS WHY NO FURTHER RESPONSE IS REQUIRED**
14 **TO DOCUMENT REQUEST NO. 25:**

15 There is no basis for compelling production of the private financial
16 information sought by this request. There is no punitive damages claim in this case.
17 Financial statements and tax returns will not show how collectors are "incentivized"
18 to collect debts, nor is that an issue in the case. Collins does not have any employees
19 that are collectors. The request for a further response should be denied.
20

21 **DOCUMENT REQUEST NO. 26:**

22 Please produce ALL DOCUMENTS that RELATE TO COLLINS' processes
23 for transmitting account information of debtors to NELSON.

24 **RESPONSE TO DOCUMENT REQUEST NO. 26:**

25 Defendant objects on the grounds that the Request is vague and ambiguous.
26 Subject to and without waiving the forgoing objection or the General Objections,
27 Defendant responds that no responsive documents exist.
28

PLAINTIFF'S REASONS TO COMPEL RESPONSE TO DOCUMENT**REQUEST NO. 26:**

Collins objects to Request No. 26 on the basis that the request is vague and ambiguous. Collins, however, has failed to exercise reason and common sense to attribute ordinary definitions to terms and phrases utilized in discovery. *Santana Row Hotel Partners, L.P. v. Zurich Am. Ins. Co.*, 2007 U.S. Dist. LEXIS 31688 (N.D. Cal. 2007). Despite the clear language of the request, Collins has not made a good-faith effort to provide a response. Further, Collins has offered no meaningful facts to support the stated objection. Thus, the boilerplate objection cannot be sustained.

Collins sued Tourgeman in San Diego Superior Court under its own name to collect on an alleged debt. In fact, Collins has filed more than 300 cases under its own name during the class period in the San Diego Superior Court alone. (Weaver Dec. ¶14). Collins retained Nelson to bring suit against Tourgeman for an alleged debt. During this process, Collins must have transmitted certain account information regarding Tourgeman to Nelson so that Nelson could file the lawsuit against Tourgeman. Thus, Collins should have documents showing how the account information is transmitted. Collins erroneously contends that no responsive documents exist. Collins appears to be hiding behind its subsidiary, Paragon Way, even though Collins files collection lawsuits against alleged debtors in its own name.

But Collins cannot use its subsidiary to shield itself from discovery. Case law directly refutes Collins's position. "The discovery rules require that a corporation furnish such information as is available from the corporation itself or from sources under its control. If the corporation can obtain the information from sources under its control, it may not avoid answering by alleging ignorance." *Goodrich Corp. v. Emhart Indus.*, 2005 U.S. Dist. LEXIS 17190, *9 (C.D. Cal. 2005). Here, Paragon Way is a subsidiary directly under Collins's control and thus Collins has no basis for withholding information related to Paragon Way.

Further, Tourgeman specifically defined Collins to include “anyone else acting on Collins Financial Services, Inc.’s behalf.” Because Paragon Way was acting to collect debts on Collins’s behalf and is Collins’s subsidiary, this document request should have accounted for Paragon Way. And, Collins, as the principal corporation, has control and possession of Paragon Way’s documents. For instance, Collins agreed in its supplemental response to Interrogatory No. 13 and 20 to produce certain documents from Paragon Way. Therefore, Collins’s response that no such documents exist is insufficient.

Accordingly, Tourgeman requests that this Court order Collins to provide a supplemental response to Request No. 26 and produce any documents improperly withheld from production.

DEFENDANTS’ REASONS WHY NO FURTHER RESPONSE IS REQUIRED TO DOCUMENT REQUEST NO. 26:

The motion to compel should be denied as to this request because Plaintiff has never made any attempt to meet and confer regarding the request before filing the motion. No party may move for an order compelling further discovery until after the party has made a good faith attempt to meet and confer to resolve the dispute without court intervention. The Federal Rules Of Civil Procedure and Local Rules of this Court are crystal clear on this point. *See* Fed. R. Civ. P. 37(a)(1) (“The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action.”); Local Rule 26.1a (“The court will entertain no motion pursuant to Rules 26 through 37, Fed. R. Civ. P., unless counsel will have previously met and conferred on **all disputed issues.**”).

Despite these clear requirements, this is one of eighteen separate discovery requests that were never discussed in any letter or any phone call by counsel for Tourgeman for this motion was filed. *See* Declaration of Tomio B. Narita In Support Of Opposition To Motion To Compel And Motion For Protective Order And Award

1 Of Sanctions (“Narita Decl.”), ¶¶ 3-6, Exs. A and B. Defendants specifically
 2 informed counsel for Tourgeman that the motion was improper because no meet and
 3 confer had been conducted, but Tourgeman’s counsel refused to take the motion off
 4 calendar, and refused to withdraw the motion as to the eighteen requests. *Id.*

5 Since no meet and confer was conducted as to “all disputed issues” as required
 6 by Rule 26.1a of the Local Rules, the entire motion should be denied. At a bare
 7 minimum, the Court should deny the motion as to all of the eighteen discovery
 8 requests, including this one, that were never discussed by counsel. *See Presidio*
 9 *Components, Inc. v. American Technical Ceramics Corp.*, 2009 WL 1423577, *3-4
 10 (S.D. Cal. May 20, 2009) (denying motion to compel where no proper meet and
 11 confer conducted in advance of motion). Counsel for Tourgeman should also be
 12 sanctioned for their deliberate refusal to comply with the requirements of the Federal
 13 Rules and the Local Rules.

14
 15 **DOCUMENT REQUEST NO. 27:**

16 Please produce ALL DOCUMENTS that RELATE TO the contractual
 17 relationship between YOU and Dell Financial Services, Inc. - including any of its
 18 past or present agents, employees, representatives, attorneys, accountants,
 19 investigators, assigns, subsidiaries, or parent companies, predecessors-in-interest,
 20 successors-in-interest, affiliates, or anyone else acting on Dell Financial Services,
 21 Inc.’s behalf.

22 **RESPONSE TO DOCUMENT REQUEST NO. 27:**

23 Defendant objects to this Request on the grounds that it is overbroad, unduly
 24 burdensome and oppressive, and to the extent that it seeks information which is not
 25 relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the
 26 discovery of admissible evidence. Defendant also objects to this Request to the
 27 extent that it seeks proprietary information, trade secret information, information
 28

1 subject to protective orders, confidentiality agreements, or statutory provisions that
2 bar the disclosure of that information without the consent of third parties.

3 Subject to and without waiving the forgoing objections or the General
4 Objections, Defendant will produce non-privileged documents in its possession,
5 custody or control that relate to Plaintiff, his account or any of the defenses asserted
6 in this action.

7 **SUPPLEMENTAL RESPONSE TO DOCUMENT REQUEST NO. 27:**

8 Defendant objects to this Request on the grounds that it is overbroad, unduly
9 burdensome and oppressive, and to the extent that it seeks information which is not
10 relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the
11 discovery of admissible evidence. Defendant also objects to this Request to the
12 extent that it seeks proprietary information, trade secret information, information
13 subject to protective orders, confidentiality agreements, or statutory provisions that
14 bar the disclosure of that information without the consent of third parties.

15 Subject to and without waiving the forgoing objections or the General
16 Objections, Defendant has produced a copy of the purchase and sale agreement
17 relating to Plaintiff's account.

18 **PLAINTIFF'S REASONS TO COMPEL RESPONSE TO DOCUMENT**
19 **REQUEST NO. 27:**

20 Federal Rule of Civil Procedure 34(b)(2)(C) requires that "[a]n objection to
21 part of a request must specify the part and permit inspection of the rest."; *see also E.*
22 *& J. Gallo Winery v. Cantine Rallo, S.p.A.*, 2006 U.S. Dist. LEXIS 42069, *3-4(E.D.
23 Cal. 2006)("If objection is made to part of an item or category, the part shall be
24 specified and inspection permitted of the remaining parts. The party submitting the
25 request may move for an order under Rule 37(a) with respect to any objection to or
26 other failure to respond to the request or any part thereof, or any failure to permit
27 inspection as requested."). In *E. & J. Gallo Winery*, the court ordered the defendant
28

1 to provide supplemental responses because the defendant's original responses
2 contained imprecise, boilerplate objections:

3 Defendant's responses do not allow for meaningful evaluation. Plaintiff
4 and the Court are unable to determine, with certainty, the requests for
5 which Defendant is producing documents, the requests for which
6 Defendant is withholding documents and on what basis, and the requests
7 for which it has no responsive documents. Defendant cites boilerplate
8 general objections, and does not explain why the objection applies to the
9 response or whether documents were withheld pursuant to the stated
10 objections.

11 Collins objects to Request No. 27 on the basis that it is "overbroad, unduly
12 burdensome and oppressive" and "not relevant to the subject matter of this lawsuit,
13 nor reasonably calculated to lead the discovery of admissible evidence." But Collins
14 fails to provide any explanation for these objections. *Keith H. v. Long Beach Unified*
15 *Sch. Dist.*, 228 F.R.D.652, 655-56 (C.D. Cal. 2005) ("The party who resists
16 discovery has the burden to show discovery should not be allowed, and has the
17 burden of clarifying, explaining, and supporting its objections."). Moreover, because
18 Collins's response is so broad and unspecific, it is impossible to tell whether
19 documents are being withheld on the basis of the stated objections, and/or whether
20 responsive documents even exist.

21 Documents related to the contractual relationship between Collins and Dell
22 reveals how debt collection activities were conducted and how Collins was
23 incentivized to pursue certain alleged debtors. To the extent Collins contends this
24 request seeks confidential information, Tourgeman has offered to sign a protective
25 order. Collins ignored this offer. (Weaver Dec. ¶19).

26 Now, Collins's supplemental response offers to produce a copy of the
27 purchase and sale agreement relating to Tourgeman's account. But this is inadequate
28 and improperly restricts the scope of the request. Indeed, the Complaint includes class
allegations and a class comprised of:

All consumers residing in the United States and abroad who, during the
period within one year of the date of the filing of the complaint, were
contacted or sued in the United States by either Collins Financial or
Nelson & Kennard in an effort to collect an alleged debt.

1 Further, the Complaint alleges that Collins “is a debt collector” that “routinely
2 attempts to collect consumer debts without spending the requisite time to verify the
3 debts and ensure the accuracy of information pertaining to the alleged debts.” ¶33.
4 The Complaint also alleges that Collins is not “meaningfully engaged” in the
5 collection of debts. ¶30. Collins’s contractual arrangement with Dell evidences
6 Collins’s debt collection practices. Since Collins’s debt collection practices are at
7 issue, this request is relevant and reasonably calculated to lead to the discovery of
8 admissible evidence.

9 Accordingly, Tourgeman requests that this Court order Collins to provide a
10 supplemental response to Request No. 27 without the stated objections, provide a
11 substantive response, and produce any documents improperly withheld from
12 production.

13 **DEFENDANTS’ REASONS WHY NO FURTHER RESPONSE IS REQUIRED**
14 **TO DOCUMENT REQUEST NO. 27:**

15 Defendant has already produced a copy of the contract between Collins and
16 Dell that relates to the acquisition of Tourgeman’s account, as well as all the data
17 that was transmitted regarding Tourgeman’s account at the time of transfer. There is
18 no basis for seeking all other documents relating to any other unrelated “contractual
19 relationship” with Dell, and Tourgeman has refused to explain why he wants this
20 information or how it bears upon the claims he has asserted. He claims that
21 Defendants sought to collect a debt that had already been paid “in full” to Dell, and
22 that Defendants filed suit against him in the wrong judicial district. None of his
23 claims relate to “contractual relationships” between Collins and Dell. The only
24 potentially relevant and responsive document is the purchase and sale agreement
25 with Dell that has already been produced. The motion should be denied as to this
26 request.

1 **DOCUMENT REQUEST NO. 28:**

2 Please produce ALL DOCUMENTS that RELATE TO COLLINS' contracts
3 with skip-tracing services and other data providers YOU use to find current
4 information for any alleged debtor.

5 **RESPONSE TO DOCUMENT REQUEST NO. 28:**

6 No responsive documents exist.

7 **PLAINTIFF'S REASONS TO COMPEL RESPONSE TO DOCUMENT**
8 **REQUEST NO. 28:**

9 Collins sued Tourgeman in San Diego Superior Court under its own name to
10 collect on an alleged debt. In fact, Collins has filed more than 300 cases under its
11 own name during the class period in the San Diego Superior Court alone. (Weaver
12 Dec. ¶14). Collins retained Nelson to bring suit against Tourgeman for an alleged
13 debt. Collins also retained Nelson to bring suits against other alleged debtors.
14 Collins and Nelson use skip-tracing services to locate these debtors. Thus, Collins
15 should have documents related to its contracts with those services and data providers.
16 Collins erroneously contends that no responsive documents exist. Collins appears to
17 be hiding behind its subsidiary, Paragon Way, even though Collins files collection
18 lawsuits against alleged debtors in its own name.

19 But Collins cannot use its subsidiary to shield itself from discovery. Case law
20 directly refutes Collins's position. "The discovery rules require that a corporation
21 furnish such information as is available from the corporation itself or from sources
22 under its control. If the corporation can obtain the information from sources under
23 its control, it may not avoid answering by alleging ignorance." *Goodrich Corp. v.*
24 *Emhart Indus.*, 2005 U.S. Dist. LEXIS 17190, *9 (C.D. Cal. 2005). Here, Paragon
25 Way is a subsidiary directly under Collins's control and thus Collins has no basis for
26 withholding information related to Paragon Way.

27 Further, Tourgeman specifically defined Collins to include "anyone else acting
28 on Collins Financial Services, Inc.'s behalf." Because Paragon Way was acting to

1 collect debts on Collins's behalf and is Collins's subsidiary, this document request
 2 should have accounted for Paragon Way. And, Collins, as the principal corporation,
 3 has control and possession of Paragon Way's documents. For instance, Collins
 4 agreed in its supplemental response to Interrogatory No. 13 and 20 to produce certain
 5 documents from Paragon Way. Therefore, Collins's response that no such
 6 documents exist is insufficient.

7 Accordingly, Tourgeman requests that this Court order Collins to provide a
 8 supplemental response to Request No. 28 and produce any documents improperly
 9 withheld from production.

10 **DEFENDANTS' REASONS WHY NO FURTHER RESPONSE IS REQUIRED**
 11 **TO DOCUMENT REQUEST NO. 28:**

12 The motion to compel should be denied as to this request because Plaintiff has
 13 never made any attempt to meet and confer regarding the request before filing the
 14 motion. No party may move for an order compelling further discovery until after the
 15 party has made a good faith attempt to meet and confer to resolve the dispute without
 16 court intervention. The Federal Rules Of Civil Procedure and Local Rules of this
 17 Court are crystal clear on this point. *See* Fed. R. Civ. P. 37(a)(1) ("The motion must
 18 include a certification that the movant has in good faith conferred or attempted to
 19 confer with the person or party failing to make disclosure or discovery in an effort to
 20 obtain it without court action."); Local Rule 26.1a ("The court will entertain no
 21 motion pursuant to Rules 26 through 37, Fed. R. Civ. P., unless counsel will have
 22 previously met and conferred on **all disputed issues.**").

23 Despite these clear requirements, this is one of eighteen separate discovery
 24 requests that were never discussed in any letter or any phone call by counsel for
 25 Tourgeman for this motion was filed. *See* Declaration of Tomio B. Narita In Support
 26 Of Opposition To Motion To Compel And Motion For Protective Order And Award
 27 Of Sanctions ("Narita Decl."), ¶¶ 3-6, Exs. A and B. Defendants specifically
 28 informed counsel for Tourgeman that the motion was improper because no meet and

1 confer had been conducted, but Tourgeman's counsel refused to take the motion off
2 calendar, and refused to withdraw the motion as to the eighteen requests. *Id.*

3 Since no meet and confer was conducted as to "all disputed issues" as required
4 by Rule 26.1a of the Local Rules, the entire motion should be denied. At a bare
5 minimum, the Court should deny the motion as to all of the eighteen discovery
6 requests, including this one, that were never discussed by counsel. *See Presidio*
7 *Components, Inc. v. American Technical Ceramics Corp.*, 2009 WL 1423577, *3-4
8 (S.D. Cal. May 20, 2009) (denying motion to compel where no proper meet and
9 confer conducted in advance of motion). Counsel for Tourgeman should also be
10 sanctioned for their deliberate refusal to comply with the requirements of the Federal
11 Rules and the Local Rules.

12 INTERROGATORIES

13 INTERROGATORY NO. 1:

14
15 Please identify the number of persons and entities in the United States who
16 you contacted for the purposes of debt collection from July 31, 2007 to the present.
17 [Definitions omitted].

18 RESPONSE TO INTERROGATORY NO. 1:

19 Zero.

20 PLAINTIFF'S REASONS TO COMPEL RESPONSE TO INTERROGATORY 21 NO. 1:

22 Collins sued Tourgeman in San Diego Superior Court under its own name to
23 collect on an alleged debt. In fact, Collins has filed more than 300 cases under its
24 own name during the class period in the San Diego Superior Court alone. (Weaver
25 Dec. ¶14). Collins retained Nelson to bring suit against Tourgeman for an alleged
26 debt. Collins also retains Nelson to bring suits against other alleged debtors. Collins
27 erroneously contends that it contacted zero persons and entities to collect debt from
28

1 July 31, 2007 to the present. This cannot be. Collins appears to be hiding behind its
2 subsidiary, Paragon Way, even though Collins files collection lawsuits against
3 alleged debtors in its own name.

4 But Collins cannot use its subsidiary to shield itself from discovery. Case law
5 directly refutes Collins's position. "The discovery rules require that a corporation
6 furnish such information as is available from the corporation itself or from sources
7 under its control. If the corporation can obtain the information from sources under
8 its control, it may not avoid answering by alleging ignorance." *Goodrich Corp. v.*
9 *Emhart Indus.*, 2005 U.S. Dist. LEXIS 17190, *9 (C.D. Cal. 2005). Here, Paragon
10 Way is a subsidiary directly under Collins's control and thus Collins has no basis for
11 withholding information related to Paragon Way.

12 Further, Tourgeman specifically defined Collins to include "anyone else acting
13 on Collins Financial Services, Inc.'s behalf." Because Paragon Way was acting to
14 collect debts on Collins's behalf and is Collins's subsidiary, this document request
15 should have accounted for Paragon Way. And, Collins, as the principal corporation,
16 has control and possession of Paragon Way's documents. For instance, Collins
17 agreed in its supplemental response to Interrogatory No. 13 and 20 to produce certain
18 documents from Paragon Way. Therefore, Collins's response that it contacted zero
19 person and entities is insufficient.

20 Accordingly, Tourgeman requests that this Court order Collins to provide a
21 supplemental response to Interrogatory No. 1.

22 **DEFENDANTS' REASONS WHY NO FURTHER RESPONSE IS REQUIRED**
23 **TO INTERROGATORY NO. 1:**

24 Defendant has already responded and explained that it is not a debt collector
25 and that it does not contact consumers in an attempt to collect debts. Tourgeman
26 knows that all collection activity is managed by non-party Paragon Way, Inc., but he
27 has elected not to pursue discovery from that entity using a proper subpoena.
28

1 Regardless, there is no basis for compelling a further response to this request
 2 because information about the number of persons or entities “contacted” over a three
 3 year period is not relevant to any claim at issue, nor likely to lead to the discovery of
 4 admissible evidence. Tourgeman claims that Defendants sued him for a debt that had
 5 already been paid “in full” to Dell, and that Defendants filed suit against him in the
 6 wrong judicial district. He has not and cannot allege that every time Defendant made
 7 “contact” with an individual, it violated the FDCPA. His request will not identify
 8 members of a class.

9 Tourgeman suggests this request is proper because he seeks to represent a
 10 purported FDCPA class of all persons who were “contacted or sued” by Defendants,
 11 and therefore “all” of Defendants’ collection practices are at issue. He is wrong.
 12 The FDCPA does not prohibit collectors from contacting consumers, nor does it bar
 13 collectors from filing suits. Rather, the Act prohibits collectors from engaging in a
 14 specific set of unlawful collection practices. *See* 15 U.S.C. §§ 1692b-1692j. In fact,
 15 the Ninth Circuit has repeatedly recognized the Act was passed to protect consumers
 16 from serious threats, harassment, abuse and other deceptive practices utilized by
 17 unscrupulous collectors. *See* 15 U.S.C. § 1692; *Pressley v. Capital Credit and*
 18 *Collection*, 760 F.2d 922, 925 (9th Cir. 1985) (purpose of Act “is to protect
 19 consumers from a host of unfair, harassing, and deceptive debt collection practices
 20 without imposing unnecessary restrictions on ethical debt collectors”) (citation
 21 omitted). It is not a wholesale ban on any type of contact with a debtor, nor does it
 22 prohibit collectors from filing suit. The focus of the Act is prevention of deceptive
 23 and intimidating conduct by collectors that would “seriously disrupt a debtor’s life”:

24 The purpose of the FDCPA is to protect vulnerable and unsophisticated
 25 debtors from abuse, harassment and deceptive collection practices. . . .
 26 Congress was concerned with disruptive, threatening, and dishonest tactics.
 27 The Senate Report accompanying the Act cites practices such as ‘threats of
 28 violence, telephone calls at unreasonable hours [and] misrepresentation of
 consumer’s legal rights.’ (Citation). **In other words, Congress seems to have
 contemplated the type of actions that would intimidate unsophisticated
 individuals and which, in the words of the Seventh Circuit, ‘would likely
 disrupt a debtor’s life.’** (Citation).

1 *Guerrero v. RJM Acquisitions LLC*, 499 F.3d 926, 938-39 (9th Cir. 2007) (emphasis
2 added).

3 Tourgeman cannot seek discovery regarding every debtor “contacted or sued”
4 by Defendants unless he identifies how the “contacts” or “suits” allegedly violated
5 the FDCPA. In *Donohue v. Quick Collect, Inc.*, 592 F.3d 1027 (9th Cir. 2010), the
6 Ninth Circuit held that an allegedly false and misleading statement by a collector
7 does not violate the FDCPA unless it is “material.” *Id.* At 1033-34. A “material”
8 misstatement is one that is “genuinely misleading” and that “may frustrate the
9 consumer’s ability to intelligently choose his or her response” to the collector’s
10 communication. *Id.* at 1034. The Court noted that:

11 In assessing FDCPA liability, **we are not concerned with mere technical**
12 **falsehoods that mislead no one**, but instead with genuinely misleading
13 statements that may frustrate a consumer’s ability to intelligently choose his or
14 her response. **Here, the statement in the Complaint did not undermine**
15 **Donohue’s ability to intelligently choose her action concerning her debt.**

16 *Id.* at 1034 (emphasis added).

17 Finally, discovery relating to “entities” contacted by Defendant for purposes of
18 debt collection cannot identify class members, because the FDCPA does not apply to
19 commercial debts. The “threshold issue” for any FDCPA case is whether the
20 plaintiff incurred a “debt” as defined by the FDCPA. The Ninth Circuit has so held:

21 Because not all obligations to pay are considered debts under the FDCPA, a
22 threshold issue in a suit brought under the Act is whether or not the dispute
23 involves a ‘debt’ within the meaning of the statute.

24 *Turner v. Cook*, 362 F.3d 1219, 1226-27 (9th Cir. 2004) (alleged obligation to pay
25 commercial tort judgment not a “debt” under FDCPA). Without evidence that
26 Defendant was seeking to collect a “debt” as defined by the FDCPA, there can be no
27 “debt collection” and no violation of the FDCPA. *See Bloom v. I.C. System, Inc.*,
28 972 F.2d 1067, 1068-69 (9th Cir. 1992) (no “debt” under FDCPA where defendant

sought to collect on loan used for business venture).⁵ The FDCPA limits the definition of a “debt” as follows:

The term ‘debt’ means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are **primarily for personal, family, or household purposes**, whether such obligation has been reduced to a judgment.

See 15 U.S.C. § 1692a(5) (emphasis added). Given this, none of the “entities” that Defendant contacted for purposes of debt collection can be class members.

Tourgeman claims that Defendants sued him for a debt that was paid “in full” and filed suit in the wrong judicial district. He is entitled to discovery related to those claims. His request for request for information about every person or entity that was “contacted” by Defendants is not relevant to his claims, nor will it identify the number of class members.

INTERROGATORY NO. 3:

Please state the form of COLLINS’ organization, including all subsidiaries and affiliates, and the date and place the organization was organized and registered and/or licensed to do business.

RESPONSE TO INTERROGATORY NO. 3:

Subject to and without waiving the General Objections, Defendant responds as follows: Collins Financial Services, Inc. Is a Texas corporation incorporated in 1996. It is licensed to do business in appropriate jurisdictions.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 3:

Subject to and without waiving the General Objections, Defendant responds as

⁵ See also *First Gibraltar Bank, FSB v. Smith*, 62 F.3d 133,135-36 (5th Cir. 1995) (affirming dismissal of FDCPA claims where defendant sought to collect obligation arising out of commercial transaction); *Beezley v. Fremont Indemnity Co.*, 804 F.2d 530, 531 (9th Cir. 1986) (per curiam) (affirming dismissal of claim under Consumer Credit Protection Act, 15 U.S.C. §§ 1601-1693r, where, *inter alia*, “the ‘debt’ involved was not a debt as defined in 15 U.S.C. § 1692a(5)”).

1 follows: Defendant is a Texas corporation incorporated in 1996. Pursuant to Federal
 2 Rule of Civil Procedure 33(d), Defendant will produce its 2009 Compliance Report
 3 which indicates its various business licenses.

4 **PLAINTIFF’S REASONS TO COMPEL RESPONSE TO INTERROGATORY**

5 **NO. 3:**

6 Collins’s supplemental response fails to account for any subsidiaries and
 7 affiliates. After several meet and confer discussions, Collins’s counsel informed
 8 Tourgeman that Paragon Way, Collins’s subsidiary, collects debts on Collins’s
 9 behalf. (Weaver Dec. ¶15). Collins, however, fails to mention Paragon Way in its
 10 original response or supplemental response. Therefore, Collins has not fully
 11 answered this interrogatory. And, an “evasive or incomplete disclosure, answer, or
 12 response” is equivalent to “a failure to disclose, answer, or respond.” Fed. R. Civ. P.
 13 37(a)(3).

14 **DEFENDANTS’ REASONS WHY NO FURTHER RESPONSE IS REQUIRED**
 15 **TO INTERROGATORY NO. 3:**

16 Defendant has already responded to the interrogatory and there is no basis for
 17 seeking a further response. Tourgeman does not allege that Collins violated any
 18 licensing requirements in this case. Rather, he claims that Defendants sued him for a
 19 debt that was paid “in full” and filed suit in the wrong judicial district. He has not
 20 even bothered to explain why this information bears on any of his claims. In any
 21 event, he has a response to the question. The motion should be denied.

22
 23 **INTERROGATORY NO. 4:**

24 Please describe COLLINS’ procedures and policies for receiving debt related
 25 information from the entity COLLINS purchases debt from.

26 **RESPONSE TO INTERROGATORY NO. 4:**

27 Defendant objects to this Interrogatory on the grounds that it is vague and
 28 ambiguous as to the terms “receiving debt related information.” Defendant also

1 objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome
 2 and oppressive, and to the extent that it seeks information which is not relevant to the
 3 subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of
 4 admissible evidence. Defendant further objects to this Interrogatory to the extent that
 5 it seeks proprietary information, trade secret information, information subject to
 6 protective orders, confidentiality agreements, or statutory provisions that bar the
 7 disclosure of that information without the consent of third parties and to the extent
 8 that it seeks information subject to the attorney-client privilege or the attorney work
 9 product doctrine.

10 Subject to and without waiving the forgoing objections or the General
 11 Objections, based upon its understanding of this Interrogatory, Defendant hereby
 12 exercises its option to produce business records that are responsive, pursuant to Rule
 13 33(d) of the Federal Rules of Civil Procedure. Defendant is willing to meet and
 14 confer with Plaintiff regarding any further response.

15 **PLAINTIFF'S REASONS TO COMPEL RESPONSE TO INTERROGATORY**

16 **NO. 4:**

17 Federal Rule of Civil Procedure 33 governs the use of Interrogatories during
 18 discovery. Rule 33(b)(3) requires that "[e]ach interrogatory must, to the extent it is
 19 not objected to, be answered separately and fully in writing under oath." Further, all
 20 grounds for objection to an interrogatory must be stated "with specificity." Fed R.
 21 Civ. P. 33(b)(4). Collins has not provided any substantive response to this
 22 interrogatory.

23 Collins objects to Interrogatory No. 4 on the basis that it is "overbroad, unduly
 24 burdensome and oppressive" and "not relevant to the subject matter of this lawsuit,
 25 nor reasonably calculated to lead the discovery of admissible evidence." But Collins
 26 fails to provide any explanation for these objections. *Blankenship v. Hearst Corp.*,
 27 519 F.2d 418, 429 (9th Cir. 1975) (those opposing discovery are "required to carry a
 28 heavy burden of showing" why discovery should be denied).

Collins also objects to Interrogatory No. 4 on the basis that the term “receiving debt related information” is vague and ambiguous. Collins, however, has failed to exercise reason and common sense to attribute ordinary definitions to terms and phrases utilized in discovery. *Santana Row Hotel Partners, L.P. v. Zurich Am. Ins. Co.*, 2007 U.S. Dist. LEXIS 31688 (N. D. Cal. 2007). This interrogatory utilizes common English words that should not preclude Collins from providing a substantive response. And, Collins has offered no meaningful facts to support the stated objection. Thus, this boilerplate objection cannot be sustained.

Federal Rule of Civil Procedure 26(b)(5) further provides:

When a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, the party must:

- (v) expressly make the claim; and
- (vi) describe the nature of the documents, communications, or tangible things not produced or disclosed—and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.

“A privilege log should contain the following information: (1) the identity and position of its author; (2) the identity and position of the recipient(s); (3) the date it was prepared or written; (4) the title and description of the document; (5) the subject matter addressed; (6) the purposes for which it was prepared or communicated; (7) the document’s present location; and (8) the specific privilege or other reason it is being withheld.” *Mancini v. Ins. Corp.*, 2009 U.S. Dist. LEXIS 51321, *10 (S.D. Cal. 2009). When asserting the attorney-client privilege, “[t]he party asserting the privilege bears the initial burden of demonstrating that the communication falls within the privilege.” *Bible v. Rio Props., Inc.*, 246 F.R.D. 614, 620 (C.D. Cal. 2007).

Here, Collins asserts the attorney-client privilege and attorney work product protection to Interrogatory No. 4. The objection is stated simply as “seek[ing] information subject to the attorney-client privilege or the attorney work product

1 doctrine.” Such a blanket assertion of the attorney-client privilege or work product
2 doctrine is insufficient to enable the propounding party to assess the applicability of
3 the privilege or protection to the specific facts of the interrogatory in question.
4 Further, Collins has failed to produce a privilege log containing any of the above-
5 described information as required by Federal Rule of Civil Procedure 26(b)(5).
6 (Weaver Dec. ¶13). As a practical matter, it is hard to conceive how there could be
7 an attorney client relationship with entities from which Collins purchases debts.
8 Consequently, the privilege claims cannot be properly evaluated, nor is there any
9 basis for asserting a privilege claim.

10 While Collins agrees to produce records in response to Interrogatory No. 4
11 pursuant to Rule 33(d), Collins fails to specify which records. If the served party
12 chooses to respond to an interrogatory by producing business records, the served
13 party must specify, in detail, the records from which the answer may be derived or
14 ascertained and afford the party serving the interrogatory reasonable opportunity to
15 examine, audit, or inspect the record. *See* Fed. R. Civ. P. 33(d); *Mancini v. Ins.*
16 *Corp.*, 2009 U.S. Dist. LEXIS 51321 (S.D. Cal. 2009).

17 As the authorities above reflect, the citation to and production of records as an
18 alternate means for responding to Interrogatories is proper so long as the documents
19 produced are the party’s “business records” and the description of the records
20 produced in lieu of a response is sufficiently detailed to enable the propounding party
21 to locate them. Here, Collins’s citation to and alleged agreement to produce
22 documents does not satisfy these two requirements. The response is insufficient for
23 two reasons. First, it does not direct Tourgeman to any “business records.” Second,
24 even assuming these documents are business records, this response lacks the required
25 specificity. Collins must at least provide the titles of the documents or Bates
26 numbers of the documents responsive to this Request.

27 Accordingly, Tourgeman requests that this Court order Collins to provide a
28 supplemental response to Interrogatory No. 4 without the stated objections and

1 provide a substantive response.

2 **DEFENDANTS' REASONS WHY NO FURTHER RESPONSE IS REQUIRED**
 3 **TO INTERROGATORY NO. 4:**

4 The motion to compel should be denied as to this request because Plaintiff has
 5 never made any attempt to meet and confer regarding the request before filing the
 6 motion. No party may move for an order compelling further discovery until after the
 7 party has made a good faith attempt to meet and confer to resolve the dispute without
 8 court intervention. The Federal Rules Of Civil Procedure and Local Rules of this
 9 Court are crystal clear on this point. *See* Fed. R. Civ. P. 37(a)(1) (“The motion must
 10 include a certification that the movant has in good faith conferred or attempted to
 11 confer with the person or party failing to make disclosure or discovery in an effort to
 12 obtain it without court action.”); Local Rule 26.1a (“The court will entertain no
 13 motion pursuant to Rules 26 through 37, Fed. R. Civ. P., unless counsel will have
 14 previously met and conferred on **all disputed issues.**”).

15 Despite these clear requirements, this is one of eighteen separate discovery
 16 requests that were never discussed in any letter or any phone call by counsel for
 17 Tourgeman for this motion was filed. *See* Declaration of Tomio B. Narita In Support
 18 Of Opposition To Motion To Compel And Motion For Protective Order And Award
 19 Of Sanctions (“Narita Decl.”), ¶¶ 3-6, Exs. A and B. Defendants specifically
 20 informed counsel for Tourgeman that the motion was improper because no meet and
 21 confer had been conducted, but Tourgeman’s counsel refused to take the motion off
 22 calendar, and refused to withdraw the motion as to the eighteen requests. *Id.*

23 Since no meet and confer was conducted as to “all disputed issues” as required
 24 by Rule 26.1a of the Local Rules, the entire motion should be denied. At a bare
 25 minimum, the Court should deny the motion as to all of the eighteen discovery
 26 requests, including this one, that were never discussed by counsel. *See Presidio*
 27 *Components, Inc. v. American Technical Ceramics Corp.*, 2009 WL 1423577, *3-4
 28 (S.D. Cal. May 20, 2009) (denying motion to compel where no proper meet and

1 confer conducted in advance of motion). Counsel for Tourgeman should also be
2 sanctioned for their deliberate refusal to comply with the requirements of the Federal
3 Rules and the Local Rules.

4
5 **INTERROGATORY NO. 5:**

6 Please describe COLLINS' procedures and policies for verifying debt related
7 information from the entity COLLINS purchases debt from.

8 **RESPONSE TO INTERROGATORY NO. 5:**

9 Defendant objects to this Interrogatory on the grounds that it is vague and
10 ambiguous as to the terms "verifying debt related information." Defendant also
11 objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome
12 and oppressive, and to the extent that it seeks information which is not relevant to
13 the subject matter of this lawsuit, nor reasonably calculated to lead to the discovery
14 of admissible evidence. Defendant further objects to this Interrogatory to the extent
15 that it seeks proprietary information, trade secret information, information subject to
16 protective orders, confidentiality agreements, or statutory provisions that bar the
17 disclosure of that information without the consent of third parties and to the extent
18 that it seeks information subject to the attorney-client privilege or the attorney work
19 product doctrine.

20 Subject to and without waiving the forgoing objections or the General
21 Objections, based upon its understanding of this Interrogatory, Defendant hereby
22 exercises its option to produce business records that are responsive, pursuant to Rule
23 33(d) of the Federal Rules of Civil Procedure. Defendant is willing to meet and
24 confer with Plaintiff regarding any further response.

25 **PLAINTIFF'S REASONS TO COMPEL RESPONSE TO INTERROGATORY**
26 **NO. 5:**

27 Federal Rule of Civil Procedure 33 governs the use of Interrogatories during
28 discovery. Rule 33(b)(3) requires that "[e]ach interrogatory must, to the extent it is

1 not objected to, be answered separately and fully in writing under oath.” Further, all
 2 grounds for objection to an interrogatory must be stated “with specificity.” Fed R.
 3 Civ. P. 33(b)(4). Collins has not provided any substantive response to this
 4 interrogatory.

5 Collins objects to Interrogatory No. 5 on the basis that it is “overbroad, unduly
 6 burdensome and oppressive” and “not relevant to the subject matter of this lawsuit,
 7 nor reasonably calculated to lead the discovery of admissible evidence.” But Collins
 8 fails to provide any explanation for these objections. *Blankenship v. Hearst Corp.*,
 9 519 F.2d 418, 429 (9th Cir. 1975) (those opposing discovery are “required to carry a
 10 heavy burden of showing” why discovery should be denied).

11 Collins also objects to Interrogatory No. 5 on the basis that the term “receiving
 12 debt related information: is vague and ambiguous. Collins, however, has failed to
 13 exercise reason and common sense to attribute ordinary definitions to terms and
 14 phrases utilized in discovery. *Santana Row Hotel Partners, L.P. v. Zurich Am. Ins.*
 15 *Co.*, 2007 U.S. Dist. LEXIS 31688 (N. D. Cal. 2007). This interrogatory features
 16 common English words that should not preclude Collins from providing a
 17 substantive response. And, Collins has offered no meaningful facts to support the
 18 stated objection. Thus, this boilerplate objection cannot be sustained.

19 Federal Rule of Civil Procedure 26(b)(5) further provides:

20 When a party withholds information otherwise discoverable by claiming
 21 that the information is privileged or subject to protection as trial-
 preparation material, the party must:

- 22 (v) expressly make the claim; and
- 23 (vi) describe the nature of the documents, communications, or tangible
 24 things not produced or disclosed—and do so in a manner that, without
 25 revealing information itself privileged or protected, will enable other
 parties to assess the claim.

26 A privilege log should contain the following information: (1) the identity and
 27 position of its author; (2) the identity and position of the recipient(s); (3) the date it
 28 was prepared or written; (4) the title and description of the document; (5) the subject

1 matter addressed; (6) the purposes for which it was prepared or communicated; (7)
 2 the document's present location; and (8) the specific privilege or other reason it is
 3 being withheld. *Mancini v. Ins. Corp.*, 2009 U.S. Dist. LEXIS 51321, *10 (S.D. Cal.
 4 2009). When asserting the attorney-client privilege, "[t]he party asserting the
 5 privilege bears the initial burden of demonstrating that the communication falls
 6 within the privilege." *Bible v. Rio Props., Inc.*, 246 F.R.D. 614, 620 (C.D. Cal.
 7 2007).

8 Here, Collins asserts the attorney-client privilege and attorney work product
 9 protection to Interrogatory No. 5. The objection is stated simply as "seek[ing]
 10 information subject to the attorney-client privilege or the attorney work product
 11 doctrine." Such a blanket assertion of the attorney-client privilege or work product
 12 doctrine is insufficient to enable the propounding party to assess the applicability of
 13 the privilege or protection to the specific facts of the interrogatory in question.
 14 Further, Collins has failed to produce a privilege log containing any of the above-
 15 described information as required by Federal Rule of Civil Procedure 26(b)(5).
 16 (Weaver Dec. ¶13). Consequently, the privilege claims cannot be properly
 17 evaluated.

18 While Collins agrees to produce records in response to Interrogatory No. 5
 19 pursuant to Rule 33(d), Collins fails to specify which records. If the served party
 20 chooses to respond to an interrogatory by producing business records, the served
 21 party must specify, in detail, the records from which the answer may be derived or
 22 ascertained and afford the party serving the interrogatory reasonable opportunity to
 23 examine, audit, or inspect the record. *See* Fed. R. Civ. P. 33(d); *Mancini v. Ins.*
 24 *Corp.*, 2009 U.S. Dist. LEXIS 51321 (S.D. Cal. 2009).

25 As the authorities above reflect, the citation to and production of records as an
 26 alternate means for responding to interrogatories is proper so long as the documents
 27 produced are the party's "business records" and the description of the records
 28 produced in lieu of a response is sufficiently detailed to enable the propounding party

1 to locate them. Here, Collins's citation to and alleged agreement to produce
 2 documents does not satisfy these two requirements. The response is insufficient for
 3 two reasons. First, it does not direct Tourgeman to any "business records." Second,
 4 even assuming these documents are business records, this response lacks the required
 5 specificity. Collins must at least provide the titles of the documents or Bates
 6 numbers of the documents responsive to this Request.

7 Accordingly, Tourgeman requests that this Court order Collins to provide a
 8 supplemental response to Interrogatory No. 5 without the stated objections and
 9 provide a substantive response.

10 **DEFENDANTS' REASONS WHY NO FURTHER RESPONSE IS REQUIRED**
 11 **TO INTERROGATORY NO. 5:**

12 The motion to compel should be denied as to this request because Plaintiff has
 13 never made any attempt to meet and confer regarding the request before filing the
 14 motion. No party may move for an order compelling further discovery until after the
 15 party has made a good faith attempt to meet and confer to resolve the dispute without
 16 court intervention. The Federal Rules Of Civil Procedure and Local Rules of this
 17 Court are crystal clear on this point. *See* Fed. R. Civ. P. 37(a)(1) ("The motion must
 18 include a certification that the movant has in good faith conferred or attempted to
 19 confer with the person or party failing to make disclosure or discovery in an effort to
 20 obtain it without court action."); Local Rule 26.1a ("The court will entertain no
 21 motion pursuant to Rules 26 through 37, Fed. R. Civ. P., unless counsel will have
 22 previously met and conferred on **all disputed issues**.").

23 Despite these clear requirements, this is one of eighteen separate discovery
 24 requests that were never discussed in any letter or any phone call by counsel for
 25 Tourgeman for this motion was filed. *See* Declaration of Tomio B. Narita In Support
 26 Of Opposition To Motion To Compel And Motion For Protective Order And Award
 27 Of Sanctions ("Narita Decl."), ¶¶ 3-6, Exs. A and B. Defendants specifically
 28 informed counsel for Tourgeman that the motion was improper because no meet and

1 confer had been conducted, but Tourgeman's counsel refused to take the motion off
2 calendar, and refused to withdraw the motion as to the eighteen requests. *Id.*

3 Since no meet and confer was conducted as to "all disputed issues" as required
4 by Rule 26.1a of the Local Rules, the entire motion should be denied. At a bare
5 minimum, the Court should deny the motion as to all of the eighteen discovery
6 requests, including this one, that were never discussed by counsel. *See Presidio*
7 *Components, Inc. v. American Technical Ceramics Corp.*, 2009 WL 1423577, *3-4
8 (S.D. Cal. May 20, 2009) (denying motion to compel where no proper meet and
9 confer conducted in advance of motion). Counsel for Tourgeman should also be
10 sanctioned for their deliberate refusal to comply with the requirements of the Federal
11 Rules and the Local Rules.

12
13 **INTERROGATORY NO. 6:**

14 Please describe COLLINS' procedures and policies for investigating the
15 addresses of alleged debtors prior to attempting contact.

16 **RESPONSE TO INTERROGATORY NO. 6:**

17 Collins does not attempt to contact debtors and therefore does not have any
18 policies or procedures that are responsive to this Interrogatory.

19 **PLAINTIFF'S REASONS TO COMPEL RESPONSE TO INTERROGATORY**
20 **NO. 6:**

21 Collins sued Tourgeman in San Diego Superior Court under its own name to
22 collect on an alleged debt. In fact, Collins has filed more than 300 cases under its
23 own name during the class period in the San Diego Superior Court alone. (Weaver
24 Dec. ¶14). Collins retained Nelson to bring suit against Tourgeman for an alleged
25 debt. Collins also retains Nelson to bring suits against other alleged debtors.
26 Further, Collins is an entity that specializes in buying debt obligations. Collins
27 erroneously contends that it does not attempt to contact debtors. This cannot be.
28

1 Collins appears to be hiding behind its subsidiary, Paragon Way, even though Collins
2 files collection lawsuits against alleged debtors in its own name.

3 But Collins cannot use its subsidiary to shield itself from discovery. Case law
4 directly refutes Collins's position. "The discovery rules require that a corporation
5 furnish such information as is available from the corporation itself or from sources
6 under its control. If the corporation can obtain the information from sources under
7 its control, it may not avoid answering by alleging ignorance." *Goodrich Corp. v.*
8 *Emhart Indus.*, 2005 U.S. Dist. LEXIS 17190, *9 (C.D. Cal. 2005). Here, Paragon
9 Way is a subsidiary directly under Collins's control and thus Collins has no basis for
10 withholding information related to Paragon Way.

11 Further, Tourgeman specifically defined Collins to include "anyone else acting
12 on Collins Financial Services, Inc.'s behalf." Because Paragon Way was acting to
13 collect debts on Collins's behalf and is Collins's subsidiary, this document request
14 should have accounted for Paragon Way. And, Collins, as the principal corporation,
15 has control and possession of Paragon Way's documents. For instance, Collins
16 agreed in its supplemental response to Interrogatory No. 13 and 20 to produce certain
17 documents from Paragon Way. Therefore, Collins's response that it does not attempt
18 to contact debtors is insufficient.

19 Accordingly, Tourgeman requests that this Court order Collins to provide a
20 supplemental response to Interrogatory No. 6.

21 **DEFENDANTS' REASONS WHY NO FURTHER RESPONSE IS REQUIRED**
22 **TO INTERROGATORY NO. 6:**

23 Defendant has already responded that it is not a debt collector, it does not
24 attempt to contact debtors, and it does not investigate their addresses. There is no
25 basis for seeking to compel a further response.

26 Discovery about Defendant's "investigation" of debts is not proper because the
27 FDCPA does not impose a duty on collectors to independently investigate and verify
28 debts before the initiate the collection process. Even though the law does not impose

1 such a duty, Defendants have no business interest in seeking to collect money from
 2 debtors that do not owe it. Defendants do have procedures in place to prevent any
 3 attempt to collect debts that have already been paid, and they have provided this
 4 information to Tourgeman already. There is no basis for compelling a further
 5 response.

6 The FDCPA does not require a debt collector to independently verify the
 7 validity of a debt before attempting to collect it. Instead, the FDCPA allows a
 8 collector to assume the debt is valid, unless the debtor submits a timely dispute to the
 9 collector. *See* 15 U.S.C. § 1692g(a)(3) (collector must notify consumer that debt will
 10 be assumed valid unless consumer disputes validity of debt within 30 days of receipt
 11 of notice); *Smith v. Transworld Sys., Inc.*, 953 F.2d 1025, 1032 (6th Cir. 1992)
 12 (FDCPA does not require collector to independently investigate debt referred for
 13 collection); *Hyman v. Tate*, 362 F.3d 965, 968 (7th Cir. 2004) (FDCPA does not
 14 require collector to independently verify validity of debt to qualify for “bona fide
 15 error” defense). Here, non-party Paragon Way, Inc. and Nelson & Kennard both sent
 16 notices to Tourgeman advising him of his right to dispute the debt, but Tourgeman
 17 never responded.⁶

18 If Tourgeman is arguing that discovery about Defendants’ “investigating” of
 19 debts is relevant to show that Defendants did not have possession of sufficient
 20 evidence to prove their case before the collection suit was filed, his requests are
 21 improper as this Court has already rejected this theory of recovery.⁷

23 ⁶ *See* Declaration of Howard Knauer In Support Of Motion For Summary
 24 Judgment (Docket 75), ¶ 5, Ex. B; Declaration of Jonathan E. Ayers In Support Of
 25 Motion For Summary Judgment (Docket 73), ¶ 4, Ex. B.

26 ⁷ *See* Order Granting In Part And Denying In Part Defendant’s Motion To Dismiss
 27 And Motion To Strike (Docket 58), at 7 (“[T]he filing of a lawsuit, even if a plaintiff
 28 does not have the means of proving the case at filing or does not ultimately prevail, has
 not by itself been considered harassment or abuse under the FDCPA. *See, e.g., Heintz*
v. Jenkins, 514 U.S. 291, 296 (1995); *Harvey v. Great Seneca Financial Corp.*, 453 F.3d

1 Defendants have provided discovery on the procedures used to ensure that they
 2 are filing suit on valid debts and are filing suit in the correct judicial district. The
 3 motion should be denied as to this request.

4
 5 **INTERROGATORY NO. 7:**

6 Please describe COLLINS' procedures and policies for determining the
 7 amount COLLINS demands from alleged debtors, including but not limited to, the
 8 method of calculating the principal owed, interest assessed and penalties applied,

9 **RESPONSE TO INTERROGATORY NO. 7:**

10 Collins does not make demands of debtors and therefore has no procedures or
 11 policies that are responsive to this Interrogatory.

12 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 7:**

13 Subject to the General Objections, Defendant responds as follows: Assuming
 14 that Plaintiff seeks information related to the origin of the amount of the demand
 15 made in the collection complaint filed against Plaintiff on behalf of Collins, the
 16 amount of the debt was obtained from the data transferred to Defendant by the
 17 original creditor. Defendant did not "calculate" the principal amount due, nor did it
 18 assess interest or penalties. Defendant relied upon Nelson & Kennard to seek the
 19 appropriate amount of statutory interest on the Plaintiff's account from the date of
 20 charged off, April 19, 2004.

21 **PLAINTIFF'S REASONS TO COMPEL RESPONSE TO INTERROGATORY**
 22 **NO. 7:**

23 Collins attempts to limit the interrogatory to the demand made in the collection
 24 complaint filed against Tourgeman. This response improperly narrows the scope of
 25 the request and misconstrues the allegations in the Complaint. The Complaint
 26
 27
 28

324, 330 (6th Cir. 2006).

contains well-pleaded allegations that Collins engages in improper debt collection practices. Indeed, the Complaint includes class allegations and a class comprised of:

All consumers residing in the United states and abroad who, during the period within one year of the date of the filing of the complaint, were contacted or sued in the United States by either Collins Financial or Nelson & Kennard in an effort to collect an alleged debt.

Further, the Complaint alleges that Collins “is a debt collector” that “routinely attempts to collect consumer debts without spending the requisite time to verify the debts and ensure the accuracy of information pertaining to the alleged debts.” ¶33. The Complaint also alleges that Collins is not “meaningfully engaged” in the collection of debts. ¶30. In other words, Collins’s debt collection activities as a whole are at issue. Thus, Collins’s procedures and policies for determining the debt amount Collins demands from alleged debtors is relevant and reveals an aspect of Collins’s debt collection practices.

Accordingly, Tourgeman requests that this Court order Collins to provide a supplemental response to Interrogatory No. 7.

DEFENDANTS’ REASONS WHY NO FURTHER RESPONSE IS REQUIRED TO INTERROGATORY NO. 7:

Defendant has already provided a response to this interrogatory, and there is no basis for seeking to compel a further answer. Defendant explained that the amount of the debt was obtained from the data transferred by the original creditor. Defendant did not “calculate” the principal amount due, nor did it assess interest or penalties, as Tourgeman’s question implies. Defendant relied upon Nelson & Kennard to seek the appropriate amount of statutory interest on the Plaintiff’s account from the date of charged off, April 19, 2004.

Tourgeman has not sued Collins for altering the amount of the debts that it buys from creditors, nor has he sued Collins claiming that it improperly “calculated” interest or any other sum that it was seeking to collect. Rather, Tourgeman claims that he had already paid his debt “in full” to Dell before it was ever transferred to Collins. This discovery has nothing to do with Tourgeman’s claims.

1 It is a frivolous waste of time for Tourgeman to seek an order compelling a
2 response when a complete response has been provided.

3
4 **INTERROGATORY NO. 8:**

5 Please describe COLLINS' procedures and policies for settling outstanding
6 alleged debts from alleged debtors.

7 **RESPONSE TO INTERROGATORY NO. 8:**

8 Collins does not settle debts with debtors and therefore has no responsive
9 policies or procedures.

10 **PLAINTIFF'S REASONS TO COMPEL RESPONSE TO INTERROGATORY**
11 **NO. 8:**

12 Collins sued Tourgeman in San Diego Superior Court under its own name to
13 collect on an alleged debt. In fact, Collins has filed more than 300 cases under its
14 own name during the class period in the San Diego Superior Court alone. (Weaver
15 Dec. ¶14). Collins erroneously contends that it does not settle debts with debtors.
16 This assertion cannot be true. Collins appears to be hiding behind its subsidiary,
17 Paragon Way, even though Collins files collection lawsuits against alleged debtors in
18 its own name.

19 But Collins cannot use its subsidiary to shield itself from discovery. Case law
20 directly refutes Collins's position. "The discovery rules require that a corporation
21 furnish such information as is available from the corporation itself or from sources
22 under its control. If the corporation can obtain the information from sources under
23 its control, it may not avoid answering by alleging ignorance." *Goodrich Corp. v.*
24 *Emhart Indus.*, 2005 U.S. Dist. LEXIS 17190, *9 (C.D. Cal. 2005). Here, Paragon
25 Way is a subsidiary directly under Collins's control and thus Collins has no basis for
26 withholding information related to Paragon Way.

27 Further, Tourgeman specifically defined Collins to include "anyone else acting
28 on Collins Financial Services, Inc.'s behalf." Because Paragon Way was acting to

1 collect debts on Collins's behalf and is Collins's subsidiary, this document request
2 should have accounted for Paragon Way. And, Collins, as the principal corporation,
3 has control and possession of Paragon Way's documents. For instance, Collins
4 agreed in its supplemental response to Interrogatory No. 13 and 20 to produce certain
5 documents from Paragon Way. Therefore, Collins's response that it does not settle
6 debts with debtors is insufficient.

7 Accordingly, Tourgeman requests that this Court order Collins to provide a
8 supplemental response to Interrogatory No. 8.

9 **DEFENDANTS' REASONS WHY NO FURTHER RESPONSE IS REQUIRED**
10 **TO INTERROGATORY NO. 8:**

11 Collins has already responded and explained that it does not communicate with
12 debtors and that it does not settle accounts with debtors. Tourgeman knows that all
13 collection activity is managed through Paragon Way, Inc., and he has elected not to
14 send subpoenas to Paragon Way.

15 More significantly, this discovery has nothing to do with the issues in this
16 case. Tourgeman does not even allege that Defendants violated the FDCPA in
17 connection with settling any debt. Even if he had, there is nothing unlawful about
18 settling debts. To the contrary, cases have repeatedly recognized that the FDCPA
19 encourages settlement of debts without litigation. "There is nothing improper about
20 making a settlement offer. (Citation). Forbidding them would force honest debt
21 collectors seeking a peaceful resolution of the debt to file suit in order to advance
22 efforts to resolve the debt-something that is clearly at odds with the language and
23 purpose of the [Act]." *Campuzano-Burgos v. Midland Credit Management, Inc.*, 550
24 F. 3d 294, 299 (3d Cir. 2008) (citing *Evory v. RJM Acquisitions Funding, LLC*, 505
25 F. 3d 769 (7th Cir. 2007) and *Lewis v. ACB Bus. Servs., Inc.*, 135 F. 3d 389, 399 (6th
26 Cir. 1998).

27 The motion must be denied as to these requests seeking information relating to
28 Defendants policies and procedures relating to settling debts.

INTERROGATORY NO. 9:

Please identify all law firms that COLLINS retained - from July 31, 2006 to the present - for the purpose of collecting debts.

RESPONSE TO INTERROGATORY NO. 9:

Collins does not retain law firms.

PLAINTIFF'S REASONS TO COMPEL RESPONSE TO INTERROGATORY NO. 9:

Collins sued Tourgeman in San Diego Superior Court under its own name to collect on an alleged debt. In fact, Collins has filed more than 300 cases under its own name during the class period in the San Diego Superior Court alone. (Weaver Dec. ¶14). Collins retained Nelson to bring suite against Tourgeman for an alleged debt. Collins also retains Nelson to bring suits against other alleged debtors. Collins erroneously contends that it does not retain law firms. This is not true. Collins appears to be hiding behind its subsidiary, Paragon Way, even though Collins files collection lawsuits against alleged debtors in its own name.

But Collins cannot use its subsidiary to shield itself from discovery. Case law directly refutes Collins's position. "The discovery rules require that a corporation furnish such information as is available from the corporation itself or from sources under its control. If the corporation can obtain the information from sources under its control, it may not avoid answering by alleging ignorance." *Goodrich Corp. v. Emhart Indus.*, 2005 U.S. Dist. LEXIS 17190, *9 (C.D. Cal. 2005). Here, Paragon Way is a subsidiary directly under Collins's control and thus Collins has no basis for withholding information related to Paragon Way.

Further, Tourgeman specifically defined Collins to include "anyone else acting on Collins Financial Services, Inc.'s behalf." Because Paragon Way was acting to collect debts on Collins's behalf and is Collins's subsidiary, this document request should have accounted for Paragon Way. And, Collins, as the principal corporation, has control and possession of Paragon Way's documents. For instance, Collins

1 agreed in its supplemental response to Interrogatory No. 13 and 20 to produce certain
2 documents from Paragon Way. Therefore, Collins's response that it does not retain
3 law firms is insufficient.

4 Accordingly, Tourgeman requests that this Court order Collins to provide a
5 supplemental response to Interrogatory No. 9.

6 **DEFENDANTS' REASONS WHY NO FURTHER RESPONSE IS REQUIRED**
7 **TO INTERROGATORY NO. 9:**

8 Collins does not retain law firms. This function is handled by non-party
9 Paragon Way, Inc. There is no basis for compelling Defendant to identify all of the
10 other law firms have been retained to collect debts on behalf of Collins. Tourgeman
11 apparently seeks this information so that he can blanket the country with subpoenas
12 directed at these other law firms in the hopes that this disruption to Defendant's
13 business relationships will coerce a settlement. This is a wholly improper abuse of
14 the discovery process.

15 Tourgeman claims that Defendants sued him for a debt that had already been
16 paid "in full" to Dell, and that Defendants filed suit against him in the wrong judicial
17 district. He has not and cannot allege that every time any law firm filed any law suit
18 on behalf of Collins, that suit somehow violated the FDCPA. His request will not
19 lead to discoverable information and will not identify members of a class.

20 Defendants have provided a detailed information describing how Nelson &
21 Kennard generally prepares lawsuit for Collins, and Defendants have produced
22 responsive documents related to the claims raised by Tourgeman in this case.
23 Defendants have also made witnesses available for depositions, but Tourgeman
24 cancelled the depositions and filed this motion. There is no basis for compelling a
25 further response to force Defendant to identify its other law firms.

26
27 **INTERROGATORY NO. 10:**

28 Please identify all lawsuits for breach of contract, Rule 3.740 collections cases,

1 violations of the FDCPA and violations of the Rosenthal Act -by caption, court, civil
2 action number, and result - that COLLINS is or has been a party to since July 31,
3 2006.

4 **RESPONSE TO INTERROGATORY NO. 10:**

5 Defendant objects to this Request on the grounds that it is compound.
6 Defendant also objects to this Interrogatory on the grounds that it is overbroad,
7 unduly burdensome and oppressive, and seeks information which is not relevant to
8 the subject matter of this lawsuit, nor reasonably calculated to lead to the discovery
9 of admissible evidence. Complaints which include unsubstantiated allegations made
10 by other debtors regarding other sets of facts have no bearing on the claims or
11 defenses in this action. Defendant also objects to this Interrogatory on the grounds
12 that the information requested, if any exists, is a matter of public record, equally
13 available to Plaintiff.

14 **PLAINTIFF'S REASONS TO COMPEL RESPONSE TO INTERROGATORY**
15 **NO. 10:**

16 Federal Rule of Civil Procedure 33 governs the use of Interrogatories during
17 discovery. Rule 33(b)(3) requires that "[e]ach interrogatory must, to the extent it is
18 not objected to, be answered separately and fully in writing under oath." Further, all
19 grounds for objection to an interrogatory must be stated "with specificity." Fed R.
20 Civ. P. 33(b)(4). Collins has not provided any substantive response to this
21 interrogatory.

22 Collins objects to Interrogatory No. 5 on the basis that it is "overbroad, unduly
23 burdensome and oppressive" and "not relevant to the subject matter of this lawsuit,
24 nor reasonably calculated to lead the discovery of admissible evidence." But Collins
25 fails to provide any explanation for these objections. *Blankenship v. Hearst Corp.*,
26 519 F.2d 418, 429 (9th Cir. 1975) (those opposing discovery are "required to carry a
27 heavy burden of showing" why discovery should be denied).
28

1 Collins also erroneously argues that “unsubstantiated allegations made by
2 other debtors regarding other sets of facts have no bearing on the claims or defenses
3 in this action.” This response misconstrues the Complaint. The Complaint contains
4 well-pleaded allegations that Collins engages in improper debt collection practices.
5 Indeed, the Complaint includes class allegations and a class comprised of:

6 All consumers residing in the United states and abroad who, during the
7 period within one year of the date of the filing of the complaint, were
8 contacted or sued in the United States by either Collins Financial or
9 Nelson & Kennard in an effort to collect an alleged debt.

10 Further, the Complaint alleges that Collins “is a debt collector” that “routinely
11 attempts to collect consumer debts without spending the requisite time to verify the
12 debts and ensure the accuracy of information pertaining to the alleged debts.” ¶33.
13 The Complaint also alleges that Collins is not “meaningfully engaged” in the
14 collection of debts. ¶30. In other words, Collins’s debt collection activities as a
15 whole are at issue. Thus, other lawsuits against Collins, especially for violations of
16 the FDCPA and the Rosenthal Act, show whether Collins engages in a pattern of
17 improperly filing lawsuits against alleged debtors and are relevant for establishing a
18 class certification.

19 Accordingly, Tourgeman requests that this Court order Collins to provide a
20 supplemental response to Interrogatory No. 10 without the stated objections and
21 provide a substantive response.

22 **DEFENDANTS’ REASONS WHY NO FURTHER RESPONSE IS REQUIRED**
23 **TO INTERROGATORY NO. 10:**

24 Tourgeman makes a very specific and very narrow set of claims in this case.
25 He alleges that Defendants sued him for a debt that he did not owe, and that they
26 filed suit in the wrong judicial district. The requested discovery is not relevant to
27 these claims, nor will help to identify class members in this case. Complaints filed
28 by other consumers, which include unsubstantiated allegations made by other debtors
regarding other sets of facts, have no bearing on the claims or defenses in this action.

1 Vague arguments by Tourgeman that this case concerns Collins’s practices “as a
2 whole” does not change the analysis.

3 Tourgeman suggests this request is proper because he seeks to represent a
4 purported FDCPA class of all persons who were “contacted or sued” by Defendants,
5 and therefore “all” of Defendants’ collection practices are at issue. He is wrong. The
6 FDCPA does not prohibit collectors from contacting consumers, nor does it bar
7 collectors from filing suits. Rather, the Act prohibits collectors from engaging in a
8 specific set of unlawful collection practices. *See* 15 U.S.C. §§ 1692b-1692j. In fact,
9 the Ninth Circuit has repeatedly recognized the Act was passed to protect consumers
10 from serious threats, harassment, abuse and other deceptive practices utilized by
11 unscrupulous collectors. *See* 15 U.S.C. § 1692; *Pressley v. Capital Credit and*
12 *Collection*, 760 F.2d 922, 925 (9th Cir. 1985) (purpose of Act “is to protect
13 consumers from a host of unfair, harassing, and deceptive debt collection practices
14 without imposing unnecessary restrictions on ethical debt collectors”) (citation
15 omitted). It is not a wholesale ban on any type of contact with a debtor, nor does it
16 prohibit collectors from filing suit. The focus of the Act is prevention of deceptive
17 and intimidating conduct by collectors that would “seriously disrupt a debtor’s life”:

18 The purpose of the FDCPA is to protect vulnerable and unsophisticated
19 debtors from abuse, harassment and deceptive collection practices. . . .
20 Congress was concerned with disruptive, threatening, and dishonest tactics.
21 The Senate Report accompanying the Act cites practices such as ‘threats of
22 violence, telephone calls at unreasonable hours [and] misrepresentation of
23 consumer’s legal rights.’ (Citation). **In other words, Congress seems to have
24 contemplated the type of actions that would intimidate unsophisticated
25 individuals and which, in the words of the Seventh Circuit, ‘would likely
26 disrupt a debtor’s life.’** (Citation).

27 *Guerrero v. RJM Acquisitions LLC*, 499 F.3d 926, 938-39 (9th Cir. 2007) (emphasis
28 added).

29 Tourgeman cannot seek discovery regarding every debtor “contacted or sued”
30 by Defendants unless he identifies how the “contacts” or “suits” allegedly violated
31 the FDCPA. In *Donohue v. Quick Collect, Inc.*, 592 F.3d 1027 (9th Cir. 2010), the
32 Ninth Circuit held that an allegedly false and misleading statement by a collector

1 does not violate the FDCPA unless it is “material.” *Id.* At 1033-34. A “material”
 2 misstatement is one that is “genuinely misleading” and that “may frustrate the
 3 consumer’s ability to intelligently choose his or her response” to the collector’s
 4 communication. *Id.* at 1034. The Court noted that:

5 In assessing FDCPA liability, **we are not concerned with mere technical**
 6 **falsehoods that mislead no one**, but instead with genuinely misleading
 7 statements that may frustrate a consumer’s ability to intelligently choose his or
 8 her response. **Here, the statement in the Complaint did not undermine**
 9 **Donohue’s ability to intelligently choose her action concerning her debt.**

10 *Id.* at 1034 (emphasis added).

11 This case concerns a specific set of allegations made by Tourgeman. It has
 12 nothing to do with other cases filed by other debtors. The request for a further
 13 response should be denied.

14 **INTERROGATORY NO. 12:**

15 Please describe the compensation agreements between COLLINS and any law
 16 firm COLLINS uses to file complaint against alleged debtors for breach of contract.

17 **RESPONSE TO INTERROGATORY NO. 12:**

18 Collins does not have compensation agreements with law firms.

19 **PLAINTIFF’S REASONS TO COMPEL RESPONSE TO INTERROGATORY** **NO. 12:**

20 Collins sued Tourgeman in San Diego Superior Court under its own name to
 21 collect on an alleged debt. In fact, Collins has filed more than 300 cases under its
 22 own name during the class period in the San Diego Superior Court alone. (Weaver
 23 Dec. ¶14). Collins retained Nelson to bring suite against Tourgeman for an alleged
 24 debt. Collins also retains Nelson to bring suits against other alleged debtors. Collins
 25 erroneously contends that it does not have compensation agreements with law firms.
 26 This cannot be. Collins appears to be hiding behind its subsidiary, Paragon Way,
 27 even though Collins files collection lawsuits against alleged debtors in its own name.
 28

1 But Collins cannot use its subsidiary to shield itself from discovery. Case law
2 directly refutes Collins's position. "The discovery rules require that a corporation
3 furnish such information as is available from the corporation itself or from sources
4 under its control. If the corporation can obtain the information from sources under
5 its control, it may not avoid answering by alleging ignorance." *Goodrich Corp. v.*
6 *Emhart Indus.*, 2005 U.S. Dist. LEXIS 17190, *9 (C.D. Cal. 2005). Here, Paragon
7 Way is a subsidiary directly under Collins's control and thus Collins has no basis for
8 withholding information related to Paragon Way.

9 Further, Tourgeman specifically defined Collins to include "anyone else acting
10 on Collins Financial Services, Inc.'s behalf." Because Paragon Way was acting to
11 collect debts on Collins's behalf and is Collins's subsidiary, this document request
12 should have accounted for Paragon Way. And, Collins, as the principal corporation,
13 has control and possession of Paragon Way's documents. For instance, Collins
14 agreed in its supplemental response to Interrogatory Nos. 13 and 20 to produce
15 certain documents from Paragon Way. Therefore, Collins's response that it does not
16 have compensation agreements with law firms is insufficient.

17 Accordingly, Tourgeman requests that this Court order Collins to provide a
18 supplemental response to Interrogatory No. 12.

19 **DEFENDANTS' REASONS WHY NO FURTHER RESPONSE IS REQUIRED**
20 **TO INTERROGATORY NO. 12:**

21 Collins has already responded that it does not have agreements with law firms,
22 so there is no further information to provide, and nothing to compel. The Defendants
23 have already provided a copy of the agreement between Paragon Way, Inc. and the
24 Nelson & Kennard firm.

25 In any event, there is no basis for compelling Defendant to identify all the
26 details of the agreements with other law firms that are retained to collect debts.
27 Tourgeman apparently seeks this information so that he can take further discovery
28 from these other firms in the hopes that this disruption to Defendant's business

1 relationships will coerce a settlement. This is a wholly improper abuse of the
2 discovery process.

3 Tourgeman claims that Defendants sued him for a debt that had already been
4 paid “in full” to Dell, and that Defendants filed suit against him in the wrong judicial
5 district. He has not and cannot allege that agreements with other law firms will shed
6 any light on this alleged conduct. His request will not lead to discoverable
7 information. There is no basis for compelling a further response.

8
9 **INTERROGATORY NO. 14:**

10 Please identify the documents COLLINS relied upon to confirm the amount of
11 David Tourgeman’s debt.

12 **RESPONSE TO INTERROGATORY NO. 14:**

13 Subject to and without waiving the forgoing objections or the General
14 Objections, pursuant to Federal Rule of Civil Procedure 33(d), Defendant will
15 produce non-privileged, responsive documents in its possession, custody or control.

16 **PLAINTIFF’S REASONS TO COMPEL RESPONSE TO INTERROGATORY**
17 **NO. 14:**

18 While Collins agrees to produce records pursuant to Rule 33(d), Collins fails
19 to specify which records. If the served party chooses to respond to an interrogatory
20 by producing business records, the served party must specify, in detail, the records
21 from which the answer may be derived or ascertained and afford the party serving the
22 interrogatory reasonable opportunity to examine, audit, or inspect the record. *See*
23 *Fed. R. Civ. P. 33(d); Mancini v. Ins. Corp.*, 2009 U.S. Dist. LEXIS 51321 (S.D. Cal.
24 2009).

25 As the authorities above reflect, the citation to and production of records as an
26 alternate means for responding to interrogatories is proper so long as the documents
27 produced are the party’s “business records” and the description of the records
28 produced in lieu of a response is sufficiently detailed to enable the propounding party

1 to locate them. Here, Collins's citation to and alleged agreement to produce
 2 documents does not satisfy these two requirements. The response is insufficient for
 3 two reasons. First, it does not direct Tourgeman to any "business records." Second,
 4 even assuming these documents are business records, this response lacks the required
 5 specificity. Collins must at least provide the titles of the documents or Bates
 6 numbers of the documents responsive to this Request.

7 Accordingly, Tourgeman requests that this Court order Collins to provide a
 8 supplemental response to Interrogatory No. 14.

9 **DEFENDANTS' REASONS WHY NO FURTHER RESPONSE IS REQUIRED**
 10 **TO INTERROGATORY NO. 14:**

11 The motion to compel should be denied as to this request because Plaintiff has
 12 never made any attempt to meet and confer regarding the request before filing the
 13 motion. No party may move for an order compelling further discovery until after the
 14 party has made a good faith attempt to meet and confer to resolve the dispute without
 15 court intervention. The Federal Rules Of Civil Procedure and Local Rules of this
 16 Court are crystal clear on this point. *See* Fed. R. Civ. P. 37(a)(1) ("The motion must
 17 include a certification that the movant has in good faith conferred or attempted to
 18 confer with the person or party failing to make disclosure or discovery in an effort to
 19 obtain it without court action."); Local Rule 26.1a ("The court will entertain no
 20 motion pursuant to Rules 26 through 37, Fed. R. Civ. P., unless counsel will have
 21 previously met and conferred on **all disputed issues**.").

22 Despite these clear requirements, this is one of eighteen separate discovery
 23 requests that were never discussed in any letter or any phone call by counsel for
 24 Tourgeman for this motion was filed. *See* Declaration of Tomio B. Narita In Support
 25 Of Opposition To Motion To Compel And Motion For Protective Order And Award
 26 Of Sanctions ("Narita Decl."), ¶¶ 3-6, Exs. A and B. Defendants specifically
 27 informed counsel for Tourgeman that the motion was improper because no meet and
 28

1 confer had been conducted, but Tourgeman's counsel refused to take the motion off
2 calendar, and refused to withdraw the motion as to the eighteen requests. *Id.*

3 Since no meet and confer was conducted as to "all disputed issues" as required
4 by Rule 26.1a of the Local Rules, the entire motion should be denied. At a bare
5 minimum, the Court should deny the motion as to all of the eighteen discovery
6 requests, including this one, that were never discussed by counsel. *See Presidio*
7 *Components, Inc. v. American Technical Ceramics Corp.*, 2009 WL 1423577, *3-4
8 (S.D. Cal. May 20, 2009) (denying motion to compel where no proper meet and
9 confer conducted in advance of motion). Counsel for Tourgeman should also be
10 sanctioned for their deliberate refusal to comply with the requirements of the Federal
11 Rules and the Local Rules.

12
13 **INTERROGATORY NO. 16:**

14 Please identify the number of letters threatening legal action COLLINS sent in
15 each calendar year from 2005 to the present.

16 **RESPONSE TO INTERROGATORY NO. 16:**

17 Zero.

18 **PLAINTIFF'S REASONS TO COMPEL RESPONSE TO INTERROGATORY**
19 **NO. 16:**

20 Collins sued Tourgeman in San Diego Superior Court under its own name to
21 collect on an alleged debt. In fact, Collins has filed more than 300 cases under its
22 own name during the class period in the San Diego Superior Court alone. (Weaver
23 Dec. ¶14). Collins retained Nelson to bring suite against Tourgeman for an alleged
24 debt. Collins also retains Nelson to bring suits against other alleged debtors. Collins
25 erroneously contends that it sent zero letters to debtors threatening legal action. This
26 cannot be. Collins appears to be hiding behind its subsidiary, Paragon Way, even
27 though Collins files collection lawsuits against alleged debtors in its own name.
28

1 But Collins cannot use its subsidiary to shield itself from discovery. Case law
2 directly refutes Collins's position. "The discovery rules require that a corporation
3 furnish such information as is available from the corporation itself or from sources
4 under its control. If the corporation can obtain the information from sources under
5 its control, it may not avoid answering by alleging ignorance." *Goodrich Corp. v.*
6 *Emhart Indus.*, 2005 U.S. Dist. LEXIS 17190, *9 (C.D. Cal. 2005). Here, Paragon
7 Way is a subsidiary directly under Collins's control and thus Collins has no basis for
8 withholding information related to Paragon Way.

9 Further, Tourgeman specifically defined Collins to include "anyone else acting
10 on Collins Financial Services, Inc.'s behalf." Because Paragon Way was acting to
11 collect debts on Collins's behalf and is Collins's subsidiary, this document request
12 should have accounted for Paragon Way. And, Collins, as the principal corporation,
13 has control and possession of Paragon Way's documents. For instance, Collins
14 agreed in its supplemental response to Interrogatory Nos. 13 and 20 to produce
15 certain documents from Paragon Way. Therefore, Collins's response that it sent zero
16 letters is insufficient.

17 Accordingly, Tourgeman requests that this Court order Collins to provide a
18 supplemental response to Interrogatory No. 16.

19 **DEFENDANTS' REASONS WHY NO FURTHER RESPONSE IS REQUIRED**
20 **TO INTERROGATORY NO. 16:**

21 Collins has already explained that it is not a debt collector and that it does not
22 send collection letters. Thus, it properly responded that it sent "zero" letters. It is
23 frivolous for Tourgeman to seek to compel a further response when no further
24 response can be given.

25 In addition, there is no basis for compelling a further response to this request
26 because Tourgeman does not alleged that there is anything improper about any
27 collection letter sent by Defendants. In fact, the Court previously dismissed the
28 claim that alleged Defendants had not sent Tourgeman a notice under section 1692g

1 of the FDCPA. *See* Order Granting In Part And Denying In Part Defendant's Motion
 2 To Dismiss And Motion To Strike (Docket 58), at 6. Tourgeman's Second Amended
 3 Complaint does not allege that Defendants sent him any collection letters.

4 There is no basis for seeking discovery on a dismissed claim. Nor is there any
 5 basis for compelling information about letters that do not exist, with respect to claims
 6 that have never been asserted. The motion should be denied as to this request.

7
 8 **INTERROGATORY NO. 17:**

9 Please describe the position at COLLINS that prepares the affidavit
 10 authorizing legal action against an alleged debtor, including but not limited to the
 11 position's duties, responsibilities, job requirements, and the number of people who
 12 perform this task for COLLINS.

13 **RESPONSE TO INTERROGATORY NO. 17:**

14 Collins did not prepare an affidavit relating to this action.

15 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 17:**

16 No person employed by Defendant prepares any "affidavit authorizing legal
 17 action against an alleged debtor." There are no such affidavits and no such position.

18 **PLAINTIFF'S REASONS TO COMPEL RESPONSE TO SPECIAL**
 19 **INTERROGATORY NO. 17:**

20 Collins sued Tourgeman in San Diego Superior Court under its own name to
 21 collect on an alleged debt. In fact, Collins has filed more than 300 cases under its
 22 own name during the class period in the San Diego Superior Court alone. (Weaver
 23 Dec. ¶14). Collins retained Nelson to bring suite against Tourgeman for an alleged
 24 debt. Collins also retains Nelson to bring suits against other alleged debtors. Collins
 25 erroneously contends that it does not prepare affidavits authorizing legal action. This
 26 cannot be. Collins appears to be hiding behind its subsidiary, Paragon Way, even
 27 though Collins files collection lawsuits against alleged debtors in its own name.
 28

1 But Collins cannot use its subsidiary to shield itself from discovery. Case law
 2 directly refutes Collins's position. "The discovery rules require that a corporation
 3 furnish such information as is available from the corporation itself or from sources
 4 under its control. If the corporation can obtain the information from sources under
 5 its control, it may not avoid answering by alleging ignorance." *Goodrich Corp. v.*
 6 *Emhart Indus.*, 2005 U.S. Dist. LEXIS 17190, *9 (C.D. Cal. 2005). Here, Paragon
 7 Way is a subsidiary directly under Collins's control and thus Collins has no basis for
 8 withholding information related to Paragon Way.

9 Further, Tourgeman specifically defined Collins to include "anyone else acting
 10 on Collins Financial Services, Inc.'s behalf." Because Paragon Way was acting to
 11 collect debts on Collins's behalf and is Collins's subsidiary, this document request
 12 should have accounted for Paragon Way. And, Collins, as the principal corporation,
 13 has control and possession of Paragon Way's documents. For instance, Collins
 14 agreed in its supplemental response to Interrogatory Nos. 13 and 20 to produce
 15 certain documents from Paragon Way. Therefore, Collins's response that no such
 16 affidavits and no such position is insufficient.

17 Accordingly, Tourgeman requests that this Court order Collins to provide a
 18 supplemental response to Interrogatory No. 17.

19 **DEFENDANTS' REASONS WHY NO FURTHER RESPONSE IS REQUIRED**
 20 **TO INTERROGATORY NO. 17:**

21 Defendant has already provided a response to this interrogatory. There is no
 22 person at Collins who prepares an affidavit authorizing legal action. Nor is there any
 23 person at Paragon Way, Inc. who has that position. There is no person or duties to
 24 identify. Defendant cannot describe something that does not exist. It is frivolous for
 25 Tourgeman to compel a further response when a complete response has been given.

26
 27 **INTERROGATORY NO. 18:**

28 Please describe the process COLLINS uses to skip trace debtors in the event of

1 a debtor's address or phone number change.

2 **RESPONSE TO INTERROGATORY NO. 18:**

3 Collins does not skip trace debtors.

4 **PLAINTIFF'S REASONS TO COMPEL RESPONSE TO INTERROGATORY**
 5 **NO. 18:**

6 Collins sued Tourgeman in San Diego Superior Court under its own name to
 7 collect on an alleged debt. In fact, Collins has filed more than 300 cases under its
 8 own name during the class period in the San Diego Superior Court alone. (Weaver
 9 Dec. ¶14). Collins retained Nelson to bring suite against Tourgeman for an alleged
 10 debt. Collins also retains Nelson to bring suits against other alleged debtors. Collins
 11 erroneously contends that it does not skip trace debtors. This cannot be. Collins
 12 appears to be hiding behind its subsidiary, Paragon Way, even though Collins files
 13 collection lawsuits against alleged debtors in its own name.

14 But Collins cannot use its subsidiary to shield itself from discovery. Case law
 15 directly refutes Collins's position. "The discovery rules require that a corporation
 16 furnish such information as is available from the corporation itself or from sources
 17 under its control. If the corporation can obtain the information from sources under
 18 its control, it may not avoid answering by alleging ignorance." *Goodrich Corp. v.*
 19 *Emhart Indus.*, 2005 U.S. Dist. LEXIS 17190, *9 (C.D. Cal. 2005). Here, Paragon
 20 Way is a subsidiary directly under Collins's control and thus Collins has no basis for
 21 withholding information related to Paragon Way.

22 Further, Tourgeman specifically defined Collins to include "anyone else acting
 23 on Collins Financial Services, Inc.'s behalf." Because Paragon Way was acting to
 24 collect debts on Collins's behalf and is Collins's subsidiary, this document request
 25 should have accounted for Paragon Way. And, Collins, as the principal corporation,
 26 has control and possession of Paragon Way's documents. For instance, Collins
 27 agreed in its supplemental response to Interrogatory Nos. 13 and 20 to produce
 28

1 certain documents from Paragon Way. Therefore, Collins's response that it does not
2 skip trace debtors is insufficient.

3 Accordingly, Tourgeman requests that this Court order Collins to provide a
4 supplemental response to Interrogatory No. 18.

5 **DEFENDANTS' REASONS WHY NO FURTHER RESPONSE IS REQUIRED**
6 **TO INTERROGATORY NO. 18:**

7 The motion to compel should be denied as to this request because Plaintiff has
8 never made any attempt to meet and confer regarding the request before filing the
9 motion. No party may move for an order compelling further discovery until after the
10 party has made a good faith attempt to meet and confer to resolve the dispute without
11 court intervention. The Federal Rules Of Civil Procedure and Local Rules of this
12 Court are crystal clear on this point. *See* Fed. R. Civ. P. 37(a)(1) ("The motion must
13 include a certification that the movant has in good faith conferred or attempted to
14 confer with the person or party failing to make disclosure or discovery in an effort to
15 obtain it without court action."); Local Rule 26.1a ("The court will entertain no
16 motion pursuant to Rules 26 through 37, Fed. R. Civ. P., unless counsel will have
17 previously met and conferred on **all disputed issues.**").

18 Despite these clear requirements, this is one of eighteen separate discovery
19 requests that were never discussed in any letter or any phone call by counsel for
20 Tourgeman for this motion was filed. *See* Declaration of Tomio B. Narita In Support
21 Of Opposition To Motion To Compel And Motion For Protective Order And Award
22 Of Sanctions ("Narita Decl."), ¶¶ 3-6, Exs. A and B. Defendants specifically
23 informed counsel for Tourgeman that the motion was improper because no meet and
24 confer had been conducted, but Tourgeman's counsel refused to take the motion off
25 calendar, and refused to withdraw the motion as to the eighteen requests. *Id.*

26 Since no meet and confer was conducted as to "all disputed issues" as required
27 by Rule 26.1a of the Local Rules, the entire motion should be denied. At a bare
28 minimum, the Court should deny the motion as to all of the eighteen discovery

requests, including this one, that were never discussed by counsel. *See Presidio Components, Inc. v. American Technical Ceramics Corp.*, 2009 WL 1423577, *3-4 (S.D. Cal. May 20, 2009) (denying motion to compel where no proper meet and confer conducted in advance of motion). Counsel for Tourgeman should also be sanctioned for their deliberate refusal to comply with the requirements of the Federal Rules and the Local Rules.

INTERROGATORY NO. 19:

If COLLINS' response to Plaintiff David Tourgeman's Requests for Admission (Set One) Request 3 served concurrently with Plaintiff David Tourgeman's Special Interrogatories is anything other than an unqualified admission, please explain the basis for COLLINS' denial.

RESPONSE TO INTERROGATORY NO. 19:

Defendant incorporates by reference its objections and response to Request for Admission No. 3. Collins does not communicate with debtors in an attempt to collect from debtors so this Request has been denied.

PLAINTIFF'S REASONS TO COMPEL RESPONSE TO INTERROGATORY NO. 19:

Collins sued Tourgeman in San Diego Superior Court under its own name to collect on an alleged debt. In fact, Collins has filed more than 300 cases under its own name during the class period in the San Diego Superior Court alone. (Weaver Dec. ¶14). Collins retained Nelson to bring suite against Tourgeman for an alleged debt. Collins also retains Nelson to bring suits against other alleged debtors. Collins erroneously contends that it does not communicate with debtors. This cannot be. Collins appears to be hiding behind its subsidiary, Paragon Way, even though Collins files collection lawsuits against alleged debtors in its own name.

But Collins cannot use its subsidiary to shield itself from discovery. Case law directly refutes Collins's position. "The discovery rules require that a corporation

furnish such information as is available from the corporation itself or from sources under its control. If the corporation can obtain the information from sources under its control, it may not avoid answering by alleging ignorance.” *Goodrich Corp. v. Emhart Indus.*, 2005 U.S. Dist. LEXIS 17190, *9 (C.D. Cal. 2005). Here, Paragon Way is a subsidiary directly under Collins’s control and thus Collins has no basis for withholding information related to Paragon Way.

Further, Tourgeman specifically defined Collins to include “anyone else acting on Collins Financial Services, Inc.’s behalf.” Because Paragon Way was acting to collect debts on Collins’s behalf and is Collins’s subsidiary, this document request should have accounted for Paragon Way. And, Collins, as the principal corporation, has control and possession of Paragon Way’s documents. For instance, Collins agreed in its supplemental response to Interrogatory Nos. 13 and 20 to produce certain documents from Paragon Way. Therefore, Collins’s response that it does not communicate with debtors is insufficient.

Also, because Rule 33(b)(1) requires a party to answer each interrogatory “fully,” it is improper and unresponsive for an answer to an interrogatory to refer to outside material, such as pleadings, depositions, or other interrogatories. 7-33 MOORE’S FEDERAL PRACTICE-CIVIL § 33.103. The reason for this rule is because answers to interrogatories must be in a form suitable for use at trial. See *Davidson v. Goord*, 215 F.R.D. 73, 77 (W.D.N.Y. 2003) (holding that it is insufficient to answer interrogatories by merely referencing allegations of the pleadings because answers must be in a form suitable for use at trial). Collins attempts to incorporate by reference its boilerplate objections to Request for Admission No. 3. This is an incomplete and inappropriate response.

DEFENDANTS’ REASONS WHY NO FURTHER RESPONSE IS REQUIRED TO INTERROGATORY NO. 19:

There is no basis for compelling a response to this impossibly vague interrogatory. Collins has explained that it does not communicate with debtors.

1 Tourgeman asked at Reqeust for Admission No. 3 for an admission about the number
 2 of debtors “affected by your actions” but he has refused to explain what he means by
 3 a debtor that has been “affected” by Collins’ actions.

4 The claims asserted in this case are narrow. Tourgeman claims that
 5 Defendants sued him for a debt that had already been paid “in full” to Dell, and that
 6 Defendants filed suit against him in the wrong judicial district. He cannot justify this
 7 request because he seeks to represent a purported FDCPA class of all persons who
 8 were “contacted or sued” by Defendants, and therefore “all” of Defendants’
 9 collection practices are at issue. The FDCPA does not prohibit collectors from
 10 contacting consumers, nor does it bar collectors from filing suits. Rather, the Act
 11 prohibits collectors from engaging in a specific set of unlawful collection practices.
 12 *See* 15 U.S.C. §§ 1692b-1692j. In fact, the Ninth Circuit has repeatedly recognized
 13 the Act was passed to protect consumers from serious threats, harassment, abuse and
 14 other deceptive practices utilized by unscrupulous collectors. *See* 15 U.S.C. § 1692;
 15 *Pressley v. Capital Credit and Collection*, 760 F.2d 922, 925 (9th Cir. 1985)
 16 (purpose of Act “is to protect consumers from a host of unfair, harassing, and
 17 deceptive debt collection practices without imposing unnecessary restrictions on
 18 ethical debt collectors”) (citation omitted). It is not a wholesale ban on any type of
 19 contact with a debtor, nor does it prohibit collectors from filing suit. The focus of the
 20 Act is prevention of deceptive and intimidating conduct by collectors that would
 21 “seriously disrupt a debtor’s life”:

22 The purpose of the FDCPA is to protect vulnerable and unsophisticated
 23 debtors from abuse, harassment and deceptive collection practices. . . .
 24 Congress was concerned with disruptive, threatening, and dishonest tactics.
 25 The Senate Report accompanying the Act cites practices such as ‘threats of
 26 violence, telephone calls at unreasonable hours [and] misrepresentation of
 27 consumer’s legal rights.’ (Citation). **In other words, Congress seems to have
 28 contemplated the type of actions that would intimidate unsophisticated
 individuals and which, in the words of the Seventh Circuit, ‘would likely
 disrupt a debtor’s life.’** (Citation).

27 *Guerrero v. RJM Acquisitions LLC*, 499 F.3d 926, 938-39 (9th Cir. 2007) (emphasis
 28 added).

1 Tourgeman cannot seek discovery regarding every debtor “contacted or sued”
 2 by Defendants unless he identifies how the “contacts” or “suits” allegedly violated
 3 the FDCPA. In *Donohue v. Quick Collect, Inc.*, 592 F.3d 1027 (9th Cir. 2010), the
 4 Ninth Circuit held that an allegedly false and misleading statement by a collector
 5 does not violate the FDCPA unless it is “material.” *Id.* At 1033-34. A “material”
 6 misstatement is one that is “genuinely misleading” and that “may frustrate the
 7 consumer’s ability to intelligently choose his or her response” to the collector’s
 8 communication. *Id.* at 1034. The Court noted that:

9 In assessing FDCPA liability, **we are not concerned with mere technical**
 10 **falsehoods that mislead no one**, but instead with genuinely misleading
 11 statements that may frustrate a consumer’s ability to intelligently choose his or
 12 her response. **Here, the statement in the Complaint did not undermine**
 13 **Donohue’s ability to intelligently choose her action concerning her debt.**

14 *Id.* at 1034 (emphasis added).

15 Tourgeman claims that Defendants sued him for a debt that was paid “in full”
 16 and filed suit in the wrong judicial district. He is entitled to discovery related to
 17 those claims. His request for request for information about all debtors “affected” by
 18 Collins’s actions is improper and will not lead to information about class.

19 DATED: May 15, 2010

SIMMONDS & NARITA LLP
 TOMIO B. NARITA

21 By: s/Tomio B. Narita

22 Tomio B. Narita
 23 Attorneys for Defendants
 24 Collins Financial Services, Inc. and
 25 Nelson & Kennard

PROOF OF SERVICE

I, Tomio B. Narita, hereby certify that:

I am employed in the City and County of San Francisco, California. I am over the age of eighteen years and not a party to this action. My business address is 44 Montgomery Street, Suite 3010, San Francisco, California 94104-4816. I am counsel of record for the defendants in this action.

On March 15, 2010, I caused **DEFENDANTS' SEPARATE STATEMENT IN SUPPORT OF OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL FURTHER RESPONSE BY COLLINS FINANCIAL SERVICES, INC. TO REQUESTS FOR PRODUCTION AND INTERROGATORIES** to be served upon the parties listed below via the Court's Electronic Filing System:

VIA ECF

Brett M. Weaver
brett@johnsonbottini.com
Counsel for Plaintiff

Daniel P. Murphy
dmurphy245@yahoo.com
Counsel for Plaintiff

Francis A. Bottini, Jr.
frankb@johnsonbottini.com
Counsel for Plaintiff

Frank J. Johnson
derekw@johnsonbottini.com
Counsel for Plaintiff

Kent R. Christenson
kchrstenson@calljenson.com
Counsel for defendants Dell Financial Services, L.L.C., and
CIT Financial USA, Inc.

Lisa A. Wegner
lwegner@calljensen.com
Counsel for defendants Dell Financial Services, L.L.C., and
CIT Financial USA, Inc.

//

//

//

1 I declare under penalty of perjury that the foregoing is true and correct.

2 Executed at San Francisco, California on this 15th day of March, 2010.

3
4 By: s/Tomio B. Narita

5 Tomio B. Narita
6 Attorneys for Defendants
7 Collins Financial Services, Inc. and
8 Nelson & Kennard
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28